Supreme Court, U.S.
FILED
APR 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

85 - 1690

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE COMPANY, an Arizona corporation

Appellants,

v.

THE CITY OF AVONDALE, a municipal corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

JURISDICTIONAL STATEMENT

JOHN J. BOUMA
Counsel of Record
EILEEN J. MOORE
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073
(602) 257-7216
Attorneys for Appellants

QUESTION PRESENTED

In Arizona a petition for annexation is the only method of initiating annexation of an area to a neighboring municipality. The petition can be considered by the annexing municipality only if it is signed by the owners of half (in value) of the property in the area to be annexed. For the residents of the area to be annexed, this is the only method of participating in the annexation decision, and of selecting the municipality that will govern the area to be annexed. The question presented is whether this annexation petition system, which totally excludes residents who do not own property from participating in the annexation decision, and which completely ignores the "one person, one vote" principle, is consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES CITED	iv
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
THE FEDERAL QUESTIONS ARE SUBSTANTIAL AND MERIT PLENARY CONSIDERATION	3
A. The Arizona annexation statute violates the equal protection clause because it permits only property owners to participate in the annexation decision, thus excluding non-property owning residents from this fundamentally important political decision	3
B. The Arizona statute also violates the equal protection clause by allocating participation according to the value of property rather than according to the one person, one vote principle	5
C. The Arizona statute is totally irrational	7
D. Appellants have standing to raise the constitutional challenge	8
CONCLUSION	10
APPENDIX	
Appendix A: Opinion (filed January 13, 1986 in the Arizona Supreme Court)	A-1
Appendix B: Opinion (filed April 25, 1985 in the Arizona Court of Appeals)	B-1
Appendix C: Judgment (filed April 19, 1983 in the Maricopa County Superior Court)	C-1

Page

Appendix D: Notice of Appeal to the Supreme Court of the United States (filed March 21, 1986 in the Arizona Supreme Court) D-1

Appendix E: Text of Arizona Revised Statutes § 9-471 ..... E-1

TABLE OF AUTHORITIES CITED

CASES	Page
Association of Data Processing Service Organization, Inc. v. Camp, 397 U.S. 150 (1970)	9
Avery v. Midland County, 390 U.S. 474 (1968)	6
Baker v. Carr, 369 U.S. 186 (1962)	5
Ball v. James, 451 U.S. 355 (1981)	6
Barrows v. Jackson, 346 U.S. 249 (1953), *reh. den.* 346 U.S. 841 (1953)	9
Bullock v. Carter, 405 U.S. 134 (1972)	6
Carey v. Population Services International, 431 U.S. 678 (1977)	9
Cipriano v. City of Houma, 395 U.S. 701 (1969)	4
City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970).	4
City of Phoenix v. Lockwood, 76 Ariz. 46, 258 P.2d 431 (1953)	9
Colquhoun v. City of Tucson, 55 Ariz. 451, 103 P.2d 269 (1940)	9
Curtis v. Board of Supervisors of Los Angeles County, 104 Cal.Rptr. 297, 501 P.2d 537 (1972)	5
Duke Power Company v. Carolina Environmental Study Group, 438 U.S. 59 (1978)	8
Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966)	7
Hill v. Stone, 421 U.S. 289 (1975)	4
Kramer v. Union Free School District, 395 U.S. 621 (1969)	4
Levinsohn v. City of San Rafael, 115 Cal.Rptr. 309 (1974)	5
Pierce v. Society of Sisters, 268 U.S. 510 (1925)	8
Reynolds v. Sims, 377 U.S. 533 (1964)	5

TABLE OF AUTHORITIES CITED continued

CASES **Page**

Salyer Land Company v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973) 5

Town of Fond du Lac v. City of Fond du Lac, 22 Wis.2d 531, 126 N.W.2d 201 (1964) 5

Truax v. Raich, 239 U.S. 33 (1915) 8

Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977) 8

Warth v. Seldin, 422 U.S. 490 (1975) 8

STATUTES

Arizona Revised Statutes Annotated § 9-471 .....2 *et seq.*

28 U.S.C. § 1257(2) 2

OTHER AUTHORITIES

Note, *The Right to Vote in Municipal Annexations*, 88 Harvard L.Rev. 1571 4

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE COMPANY, an Arizona corporation

Appellants,

v.

THE CITY OF AVONDALE, a municipal corporation,

Appellee.

JURISDICTIONAL STATEMENT

Appellants Goodyear Farms, Litchfield Park Properties and Litchfield Park Service Company appeal from the judgment and opinion of the Arizona Supreme Court dated January 13, 1986, vacating the decision of the Arizona Court of Appeals, and upholding the constitutionality of Arizona's annexation statute. [1]

28 U.S.C. § 2403(b) may be applicable. Pursuant to Rule 28.4(c), United States Supreme Court Rules, this pleading has been served upon the Arizona State Attorney General.

[1] Appellants Goodyear Farms, Inc., Litchfield Park Properties, Inc. and Litchfield Park Service Company, Inc. are wholly-owned subsidiaries of the Goodyear Tire and Rubber Company.

OPINIONS BELOW

The opinion of the Arizona Supreme Court has not yet been reported. The opinion of the Arizona Court of Appeals has not yet been reported. The opinions have been duplicated in Appendix A and Appendix B, respectively.

JURISDICTION

The judgment and opinion of the Arizona Supreme Court were rendered on January 13, 1986. No motion for rehearing was filed. A notice of appeal to this Court was filed in the Arizona Supreme Court on March 21, 1986 (App. D). Jurisdiction is conferred on this Court by 28 U.S.C. § 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Arizona Revised Statutes § 9-471(A)(1) provides:

§ 9-471. Annexation by petition

A. A city or town may extend and increase its corporate limits in the following manner:

1. On presentation of a petition in writing by the owners of not less than one-half in value of the real and personal property as would be subject to taxation by the city or town in the event of annexation, in any territory contiguous to the city or town, as shown by the last assessment of the property, and not embraced within the city or town limits, the governing body of the city or town may, by ordinance, annex the territory to such city or town.

The remainder of A.R.S. § 9-471, not directly in issue, is reproduced in Appendix E.

STATEMENT OF THE CASE

This appeal challenges the constitutionality of Arizona's selective statutory procedure for annexing unincorporated lands to existing cities or towns. On May 26, 1981, appellee Avondale passed Ordinance No. 301, attempting to annex a large amount of property in the Litchfield Park community. Appellants are corporations that own property in the area

proposed for annexation to Avondale. As "interested parties" within the meaning of A.R.S. § 9-471, they filed a Petition to Set Aside the annexation, challenging the constitutionality of the annexation statute upon the grounds stated in the Question Presented herein, and under the Fifth and Fourteenth Amendments to the United States Constitution. They alleged that the annexation would affect and damage them by subjecting them to the ordinances and laws of Avondale, to the charges and taxes for municipal services, and to the general control, authority and jurisdiction of the Avondale City Council.

On cross-motions, summary judgment was granted in favor of the City. The trial judge held the statute constitutional, without opinion (App. C). Appellants timely appealed to the Arizona Court of Appeals. In that court, appellants argued that the annexation process at issue contravenes the Equal Protection clause, the Fourteenth Amendment of the United States Constitution. The Court of Appeals agreed, holding the annexation statute unconstitutional.

The City sought review in the Arizona Supreme Court, pursuant to Rule 23, Arizona Rules of Civil Appellate Procedure. The Supreme Court accepted jurisdiction and reversed. In a four-to-one split decision, the majority held that the Arizona statute does not violate the federal constitution.

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL AND MERIT PLENARY CONSIDERATION

A. The Arizona Annexation Statute Violates The Equal Protection Clause Because It Permits Only Property Owners To Participate In The Annexation Decision, Thus Excluding Non-Property Owning Residents From This Fundamentally Important Political Decision.

Arizona's annexation statute, A.R.S. § 9-471(A), provides that the only method of initiating annexation of an area to a neighboring municipality is to present the governing body of

the annexing city or town with a petition signed by the owners of one-half of the assessed value of the real and personal property in the area to be annexed. If such a petition is presented, the neighboring municipality may, in its discretion, decide whether or not to annex the petitioning area. The people of that area have no further say in the process. If such a petition is not presented, no annexation can occur.

Appellants urge that this statute is plainly unconstitutional because it completely excludes non-property owning residents from participation in this fundamentally important political annexation decision. Non-property owning residents in the area to be annexed legally cannot sign the petition, nor is their failure to sign taken into account in judging the sufficiency of the petition. They are totally disenfranchised. Yet the annexation decision is an extremely important political decision that has great impact on the lives and economic and social well-being of the non-property owning residents, just as it does on the lives of property owners. Consumers are subject to increased property taxation through increased rents and increased prices. They are intimately affected by the utilities they pay, the municipal services such as police, fire protection and sanitation services that they receive, and the schools to which they send their children. Landowners and non-landowners alike share the need for, the benefits of, and in many respects the burdens from all public services. *See* Note, *The Right To Vote In Municipal Annexations*, 88 Harvard L. Rev. 1571, 1594.

This Court has repeatedly held that without some compelling state interest for doing so, such an exclusion of non-property owning residents from participation in a political decision that affects them so vitally clearly violates the Equal Protection Clause. *See, Hill v. Stone*, 421 U.S. 289 (1975); *Kramer v. Union Free School District*, 395 U.S. 701 (1969); *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). No such compelling interest has been advanced in this case; nor does any exist.

Although the present case involves the right to petition rather than the right to vote, appellants submit that the unanimous Arizona Court of Appeals and the dissenting Justice in the court below were clearly correct in holding that the equal protection principle applies just as strongly. Where, as here, a state allows some residents to have a controlling voice in an aspect of the political process, it cannot exclude others from participation in the process because of their failure to own property. The principle of equal political participation applies to all forms of direct citizen participation, not merely to elections. For equal protection purposes, the right to be counted in a petition is equivalent to the right to be counted in an election.

Numerous cases in the lower courts have thus likened the equal right to participate in an annexation petition to the equal right to vote in an election. *See, Curtis v. Board of Supervisors of Los Angeles County,* 104 Cal.Rptr. 297, 309, 501 P.2d 537, 549 (1972); *Levinsohn v. City of San Rafael,* 115 Cal.Rptr. 309 (1974); *Town of Fond du Lac v. City of Fond du Lac,* 22 Wis.2d 533, 539, 126 N.W.2d 201, 203-204 (1964). These cases are correct. The decision of the Arizona Supreme Court below is flatly inconsistent with these decisions. Plenary review by this Court is necessary to resolve this conflict and to establish the right to equal participation in political annexation decisions.

B. **The Arizona Statute Also Violates The Equal Protection Clause By Allocating Participation According To The Value Of Property Rather Than According To The One Person, One Vote Principle.**

In the years since the promulgation of this Court's "one person, one vote" test for determining the propriety of restrictions on effective participation in the electoral process, *Baker v. Carr,* 369 U.S. 186 (1962), and *Reynolds v. Sims,* 377 U.S. 533 (1964), it has become well settled that, in general, votes must be allocated to people, not to property. The sole exception to the "one person, one vote" principle is one for "special purpose elections," *Salyer Land Co. v. Tulare*

Lake Basin Water Storage District, 410 U.S. 719 (1973). Where an election or similar process has a limited purpose and its activities disproportionately affect landowners as a group, denying the franchise to those not "specially interested" may be rationally justified. *See, Ball v. James*, 451 U.S. 355 (1981). Where the political activity involved, however, is not one of limited and special interest, but rather, where a municipal body exercises general governmental powers over the entire geographic area it serves, each resident must be entitled to an equal opportunity to influence the selection of the governing body's lawmakers. *See, Avery v. Midland County*, 390 U.S. 474 (1968); *Bullock v. Carter*, 405 U.S. 134 (1972).

The present case does not involve a special purpose election. It involves citizen participation in a fundamentally important political decision that will change the laws and people that will govern the area to be annexed. Annexation is a matter of general interest and impact; the annexing municipality will exercise general governmental control over the area to be annexed.

The Arizona annexation statute plainly violates the "one person, one vote" principle by assessing the sufficiency of an annexation petition according to the proportion of property value rather than the proportion of people who sign such a petition. Thus, the greater the assessed value of an owner's property, the greater the weight of that owner's signature (or failure to sign). One property owner with substantial holdings can, for example, effectively block all action by a much greater number of people. Similarly, such a property owner can also precipitate the annexation process against the wishes, best interests and objections of every resident, subjecting the residents to the laws and jurisdiction of a municipality they had no part in selecting.

Whether the validity of an annexation petition can thus be made to depend on the wishes of a majority of property values rather than on the wishes of a majority of people is an

important federal question that clearly merits this Court's plenary consideration.

C. The Arizona Statute Is Totally Irrational.

As Justice Feldman's dissenting opinion below points out, the Arizona Supreme Court erroneously framed the question before it by asking whether there is any legitimate reason to give property owners a voice in such a decision. The court below, of course, answered that question in the affirmative. The relevant inquiry here, however, is not whether there is a rational basis for including property owners in the petition process (as there clearly is), but whether there is any rational basis for excluding residents of the area to be annexed because they do not own taxable property. *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966). The Arizona Supreme Court completely failed to explain why a non-resident property owner, who has never set foot in Arizona (and who may never intend to do so) may nevertheless have the sole voice in determining whether the property is to be annexed; while those who reside on the property, whose vital interests will be affected by the question of annexation, have essentially no voice whatsoever in which government will provide them with necessary governmental services. As the unanimous Court of Appeals and the dissenting Justice below demonstrate, there is in fact no rational basis for the total exclusion of non-property owning residents from the annexation process.

In upholding the annexation statute, the majority of the Arizona Supreme Court seemed to simply rely on the thought that annexation does not seriously affect non-property owners and owners of lesser valued properties. That view is demonstrably wrong. Annexation directly affects every citizen in the area to be annexed. It directly determines the laws and government that will exercise jurisdiction over the area to be annexed. The suggestion of the Arizona court that non-property owning residents may have some significant voice in the process despite their exclusion from the petition process is but fantasy. If the owner or owners of 50%

of the assessed value of the property in the area to be annexed desire to precipitate and control annexation, the annexing entity is chosen and resolved. The decision is then placed entirely in the hands of the annexing municipality. It has no obligation to heed the view of the majority of residents in the area to be annexed; those residents are indeed not even represented by the municipality at the time of the annexation decision. Nor can any number of non-property owning residents seek or initiate annexation if the owner or owners of 50% in value of the property disagree. The absence of any rational basis by which this scheme can survive constitutional scrutiny is an important federal question that merits this Court's plenary consideration.

D. **Appellants Have Standing To Raise The Constitutional Challenge.**

In order to have standing, appellants need only demonstrate a "distinct and palpable injury" that can fairly be traced to the challenged conduct, so that the exercise of this Court's jurisdiction will redress their injury. *Warth v. Seldin*, 442 U.S. 490, 501 (1975); *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 261 (1977). Appellants amply meet these requirements.

As property owners in the area to be unconstitutionally annexed, appellants will suffer specific, tangible injury by being subjected to the laws and ordinances of the City of Avondale, to its charges and taxes for municipal services, and to the general control, authority and jurisdiction of that City. The injury to appellants is clearly redressible by this Court; if this Court holds A.R.S. § 9-471 to be unconstitutional, the annexation will be nullified and can be reimposed on appellant, if at all, only under a constitutional process.

Appellants are also denied the right to associate politically with the non-property owning residents to resist the annexation petition. This Court has recognized standing in a wide variety of similar cases. *See, e.g., Duke Power Company v. Carolina Environmental Study Group*, 438 U.S. 59 (1978). *See also, Truax v. Raich*, 239 U.S. 33 (1915); *Pierce v. So-*

ciety of Sisters, 268 U.S. 510 (1925); *Barrows v. Jackson*, 346 U.S. 249 (1953), *reh. den.* 346 U.S. 841 (1953); *Carey v. Population Services International*, 431 U.S. 678 (1977).

The framework of the Arizona annexation statute also supports appellants' direct interest and standing. A.R.S. § 9-471(C) allows any "interested party" to question the validity of the annexation. The Arizona Supreme Court has interpreted the predecessor to the current statute to allow any property owner or taxpayer in the area to be annexed to challenge the city's jurisdiction to annex. *City of Phoenix v. Lockwood*, 76 Ariz. 46, 258 P.2d 431 (1953); *Colquhoun v. City of Tucson*, 55 Ariz. 451, 103 P.2d 269 (1940). Appellants fall into both categories. The legislature thus created a statutory right in citizens such as appellants to question the validity of the annexation procedure; without a doubt, this Arizona statute creates a right at least as substantial as that created by the Administrative Procedure Act, 5 U.S.C. § 702, in interested persons to judicial review of rules issued by federal agencies. *See, e.g., Association of Data Processing Service Organization, Inc. v. Camp*, 397 U.S. 150 (1970). Where, as here, there is a clear tangible impact on the party raising the constitutional question, and where political associational rights are also involved, the case is plainly justiciable under Article III. In such circumstances, Arizona's explicit decision to confer standing should be respected.

CONCLUSION

The issues raised by appellants are not matters of only state or local applicability. Appellants are asserting an important federal constitutional right. Review by this Court is therefore required.

RESPECTFULLY SUBMITTED,

JOHN J. BOUMA
Counsel of Record

EILEEN J. MOORE
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073
(602) 257-7216

Attorneys for Appellants

April 14, 1986

APPENDIX TO JURISDICTIONAL STATEMENT
TABLE OF CONTENTS

Appendix A: Opinion (filed January 13, 1986 in the Arizona Supreme Court) A-1

Appendix B: Opinion (filed April 25, 1985 in the Arizona Court of Appeals) B-1

Appendix C: Judgment (filed April 19, 1983 in the Maricopa County Superior Court) C-1

Appendix D: Notice of Appeal to the Supreme Court of the United States (filed March 21, 1986 in the Arizona Supreme Court) D-1

Appendix E: Text of Arizona Revised Statutes § 9-471 ..... E-1

APPENDIX A
IN THE SUPREME COURT OF THE STATE OF ARIZONA

In Banc

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE COMPANY, an Arizona corporation, Petitioners-Appellants, v. THE CITY OF AVONDALE, a municipal corporation, Respondent-Appellee.	Supreme Court No. 18275-PR (Court of Appeals No. 1 CA-CIV 7127)

Appeal from the Superior Court of Maricopa County
Cause No. C-438574
The Honorable Rudolph J. Gerber
AFFIRMED

Opinion of the Court of Appeals,
Division One
filed 25 April 1985
Vacated

Snell & Wilmer — Phoenix
By John Bouma and Eileen Moore
Attorneys for Petitioners-Appellants

Frank Ross — Litchfield Park
Attorney for Respondent-Appellee

Johnson & Shelley — Mesa
By J. LaMar Shelley
Attorneys for Brief of Amicus Curiae
League of Arizona Cities and Towns

Evans, Kitchel & Jenckes — Phoenix
By John T. Moshier and Katherine M. Harmeyer
Attorneys for Brief of Amicus Curiae
Town of Gilbert, et al

Martinez & Curtis — Phoenix
By Jay M. Martinez and Susan D. Goodwin
Attorneys for Brief of Amicus Curiae
Town of Gilbert, et al

Robert K. Corbin, The Attorney General — Phoenix
By Anthony B. Ching, Solicitor General
and Toni McClory,
Assistant Attorney General
Attorneys for Brief of Amicus Curiae
State of Arizona

Lewis and Roca — Phoenix
By John P. Frank and Michael O. Miller
Attorneys for Brief of Amicus Curiae
AMCOR Investments Corporation

CAMERON, Justice

This is a petition for review of an opinion and decision of the court of appeals, which reversed a summary judgment in favor of the City of Avondale and declared the Arizona annexation statute, A.R.S. § 9-471, unconstitutional. Goodyear Farms v. City of Avondale, _____ Ariz. _____, _____ P.2d _____ (1985), [No. 1 CA-CIV 7127, filed 25 April 1985]. We have jurisdiction pursuant to art. 6 § 5(3) of the

Arizona Constitution, A.R.S. § 12-120.24 and Rule 23, Ariz. R. of Civ. App. Proc., 17A A.R.S. [1]

The issue to be decided on review is whether A.R.S. § 9-471(A)(1) violates the equal protection clauses of the Federal and Arizona Constitutions by providing that only property owners can initiate annexation by the signing of annexation petitions.

The facts are not in dispute. In 1981, petitions were circulated among owners of property adjacent to the City of Avondale and owned in part by the petitioners. The petitions were signed by property owners representing more than one-half of the real and personal property subject to taxation in the area and then presented to the City of Avondale (Avondale) requesting annexation. Consequently, Avondale noticed and held a public hearing on the proposed annexation.

Goodyear Farms, Litchfield Park Properties and Litchfield Park Service Company (Goodyear Farms), corporations owning property in the area to be annexed, were specifically invited to the public hearing. Following the hearing, on 26 May 1981, Avondale passed Annexation Ordinance No. 301 which annexed certain portions of the Litchfield Park community contiguous to its boundaries. Goodyear Farms filed suit challenging the validity of the annexation ordinance. They claimed that A.R.S. § 9-471, the statute providing the method of municipal annexation, was unconstitutional.

---

[1] Amicus raises the issue of whether Goodyear Farms, a property owner, has standing to raise a constitutional challenge on behalf of non-property owners who have not affirmatively been shown to exist. We need not decide this issue for the reasons given in State v. B Bar Enterprises Inc., 133 Ariz. 99, 101 n.2, 649 P.2d 978, 980 n.2 (1982) (standing is not a state court constitutional jurisdictional requirement, plus not raised by parties) and Fraternal Order of Police Lodge 2 v. Phoenix Employee Relations Board, 133 Ariz. 126, 127, 650 P.2d 428, 429 (1982) (exception to Arizona rule of judicial restraint for cases of great public importance that are likely to recur). See also Armory Park Neighborhood Association v. Episcopal Community Services in Arizona [No. 17980-PR, filed 29 August 1985].

Upon cross-motions for summary judgment, the trial court ruled in favor of Avondale finding the ordinance valid and constitutional. The court of appeals reversed, holding that A.R.S. § 9-471(A)(1) violates the equal protection clauses of the Federal and Arizona Constitution, "insofar as it excludes non-property owners from signing annexation petitions." Goodyear Farms v. City of Avondale, supra, slip op. at 10. We granted Avondale's petition for review.

In Arizona, a city or town may annex property according to the procedure provided in A.R.S. § 9-471. Annexation can only be initiated:

> On presentation of a petition in writing signed by the owners of not less than one half in value of the real and personal property as would be subject to taxation by the city or town in the event of annexation, in any territory contiguous to the city or town, as shown by the last assessment of the property, and not embraced within the city or town limits, the governing body of the city or town may, by ordinance, annex the territory to such city or town. . . .

A.R.S. § 9-471(A).

This statute provides a two-tier process of annexation. First, a petition requesting annexation must be signed by the owners of not less than one-half in value of the real and personal property subject to taxation, if the annexation is completed. Second, the governing body of the interested municipal corporation may then, at its discretion, enact an ordinance annexing the territory. Goodyear Farms argues that this method of annexation is unconstitutional, as a violation of equal protection, because it denies non-property owners residing in the area to be annexed the right to participate in the annexation decision.

The legislature has broad power over municipal annexations. *City of Tucson v. Garrett*, 77 Ariz. 73, 267 P.2d 717 (1954). This power was clearly recognized by the United States Supreme Court in *Hunter v. City of Pittsburgh*, 207

U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907), its landmark decision in this area, which stated:

> We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purposes of executing these powers properly and efficiently they usually are given the power to acquire, hold and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. * * * The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all respects the state is supreme, and its legislative body, conforming as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences.

Id. at 178-179, 28 S.Ct. at 46-47. Further, this court has stated, "[t]he extent of the right of municipalities to enlarge their boundaries is dependent entirely on the legislature and its power in that respect is plenary in the absence of con-

stitutional limitations, . . ." *City of Tucson v. Garrett*, 77 Ariz. at 76, 267 P.2d at 719.

As to constitutional limitations where a classification does not involve a suspect class or a constitutionally protected interest, the equal protection clause is violated only if the classification is wholly unrelated to the objectives of the state's action. *State v. Reisig*, 128 Ariz. 60, 61, 623 P.2d 849, 850 (App. 1981). Under this "rational basis" test, a legislative classification will not be set aside if any set of facts rationally justifying it is demonstrated to or perceived by the courts. *State v. Kelly*, 111 Ariz. 181, 184, 526 P.2d 720, 723 (1974), cert. denied, 420 U.S. 935, 95 S.Ct. 1143, 43 L.Ed.2d 411 (1975).

When, however, the classification drawn by the legislature is inherently suspect or where the legislation infringes on a fundamental right, *Riley v. Stoves*, 22 Ariz. App. 223, 228 n.2, 526 P.2d 747, 752 n.2 (1974), a classification will be upheld only if it is necessary to promote a compelling state interest. *Arizona Downs v. Arizona Horsemen's Foundation*, 130 Ariz. 550, 555, 637 P.2d 1053, 1058 (1981).

In the instant case, Goodyear Farms does not maintain that there is an inherently suspect classification involved. Goodyear Farms does maintain that the annexation petitioning process is analogous to the fundamental right to vote, *e.g. Curtis v. Board of Supervisors*, 7 Cal.3d 942, 104 Cal.Rptr. 297, 501 P.2d 537 (1972) (statutes that touch upon or burden the right to vote), *Town of Fond du Lac v. City of Fond du Lac*, 22 Wis.2d 533, 126 N.W.2d 201 (1964) (the right of an elector to participate in an annexation proceeding is analogous to voting upon the question) and that it, therefore, infringes on a fundamental right. We do not agree.

Admittedly, the expansive power given to the legislature over municipal corporations in *Hunter* is not unrestrained where voting is concerned. *See Town of Lockport v. Citizens for Community Action*, 430 U.S. 259, 97 S.Ct. 1047, 51 L.Ed.2d 313 (1977); *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960); *Hayward v. Clay*, 573 F.2d

187 (4th Cir. 1978), cert. denied, 439 U.S. 959, 99 S.Ct. 363 (1978). In several voting rights cases, the United States Supreme Court has used the equal protection clause to strike down as unfair voter classifications where important municipal decisions were to be made by voters in an election. *See Kramer v. Union Free School District,* 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); *Cipriano v. City of Houma,* 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969); *City of Phoenix v. Kolodziejski,* 399 U.S. 204, 90 S.Ct. 1990, 26 L.Ed.2d 523 (1970).

A.R.S. § 9-471 does not, however, provide for an election on the issue of annexation. The United States Court of Appeals in *Berry v. Bourne,* 588 F.2d 422, 424 (4th Cir. 1978), noted that since the electors in the area to be annexed are not given the right to vote under the challenged statute, its application poses no equal protection issue. The statute in that case was very similar to ours, in that it required a petition of three-fourths of the freeholders requesting annexation before the governing body of the annexing city could annex the area. *Id.* at 423. Without an election, the voting rights cases are not directly applicable. *See Weber v. City Council of Thousand Oaks,* 9 Cal.3d 950, 109 Cal. Rptr. 553, 513 P.2d 601 (1973). Also, there is "no federal constitutional right to vote on annexation matters." *Township of Jefferson v. City of West Carrollton,* 517 F.Supp. 417, 420 (S.D. Ohio 1981), *aff'd* 718 F.2d 1099 (6th Cir. 1983). *See also Hayward v. Clay,* 573 F.2d at 190 (4th Cir. 1978).

Goodyear Farms argues, however, that an actual election is not required to trigger strict scrutiny. They contend that it is enough if the annexation procedure is analogous to voting, *Town of Fond du Lac, supra,* or touches upon or burdens the right to vote. *Curtis v. Board of Supervisors, supra.* We believe that both of these cases are distinguishable.

The finding in *Town of Fond du Lac* that the signing of an annexation petition is analogous to voting arose where the annexation petition required the signatures of resident electors. Therefore, it was held that the signature of an

elector on an annexation petition was the exercise of a political right to participate in a governmental process like voting. *Town of Fond du Lac,* 126 N.W.2d at 204. In a later case, the Wisconsin Court of Appeals enunciated the distinction between a property owner as opposed to an elector signing an annexation petition. *Town of Medary v. City of La Crosse,* 88 Wis.2d 101, 277 N.W.2d 310 (App. 1979).

> Ownership itself, detached from the personal benefits or detriments that accompany residency in a municipality, is more of a private right than the political right a resident may have in annexation. * * * The two types of interests are treated differently because they are different. Thus the political nature of annexation petitions recognized as applicable to electors in *De Bauche* and *Fond du Lac* is not applicable to property owners.

Id. at 105, 277 N.W.2d at 314. We do not believe that the Arizona annexation petition process, which is signed by property owners, would be a political right analogous to voting.

In *Curtis v. Board of Supervisors, supra,* the California Supreme Court invalidated a statute which allowed landowners to bar an incorporation election. Under the California statute, after incorporation proceedings have begun but before the statutorily required incorporation election, a petition could be submitted, signed by fifty-one percent of the owners of the total assessed value of land in the area, which would deprive the county board of supervisors of jurisdiction to call for an incorporation election and no further incorporation could be initiated for one year. *Id.* at 948, 104 Cal. Rptr. at 301, 501 P.2d at 541. The court found that barring an election touched upon and burdened the right to vote and applied the compelling state interest test. *Id.* at 953, 104 Cal.Rptr. at 306, 501 P.2d at 546. Based on *Curtis,* a similar landowner veto of an annexation election was invalidated in *Levinsohn v. City of San Rafael,* 40 Cal.App.3d 656, 115 Cal.Rptr. 309 (1974).

The Arizona annexation statute provides for neither an annexation election nor a veto by property owners over such an election. A.R.S. § 9-471. Such a procedure, therefore, should not be invalid under *Curtis*. We note that the California Supreme Court upheld a much more invidious classification in *Weber v. City Council of Thousand Oaks*, 9 Cal.3d 950, 109 Cal.Rptr. 553, 513 P.2d 601 (1973), against an equal protection claim similar to the one made here and in *Curtis*. In *Weber*, the California statute involved allowed annexation of land having less than twelve registered voters without calling for an annexation election. *Id.* at 953-954, 109 Cal.Rptr. at 554, 513 P.2d at 602. Annexation of land with more than twelve registered voters required an annexation election. *Id.* It was contended that this classification touched upon or burdened their right to vote, essentially disenfranchising them. *Id.* at 959-960, 109 Cal.Rptr. at 558-559, 513 P.2d at 606-607. The California court upheld the statute and distinguished both the "voting rights" cases and *Curtis*, stating:

> All of the foregoing cases are distinguishable on the ground that in each instance the classification was designed to exclude from an election an "identifiable class" of electors.
>
> * * *
>
> Each of these decisions, including *Curtis*, involves an unconstitutional impairment of voting rights in elections actually provided for by state law as distinct from the claim now advanced by plaintiffs that it is unconstitutional for the Legislature not to have provided for an annexation election in the . . . instant case although providing for it in other circumstances.

Id. at 960-961, 109 Cal.Rptr. at 559, 513 P.2d at 607 (citation omitted) (footnote omitted) (emphasis added). We believe *Curtis* is inapplicable to the case at bar.

Arizona does not have any case law precisely on point. However, we have held, in an annexation case challenging the property owner petition process as a violation of art. 7,

§ 2 of the Arizona Constitution dealing with voter qualifications, that:

> The proposition of law is presented that the annexation statute is a method of voting analogous to and covered by the same general principles as primary and general elections.
>
> * * *
>
> [T]he proposition offered must be based on the assumption that to be constitutional the legislature must permit anyone who pays municipal taxes of any character to be represented on the petition and to have a say on the question of annexation. Such an assumption is unsound for the reason that the legislature is not so limited in the exercise of its power over the procedure to be followed in enlarging the boundaries of municipalities. If the legislature desires to measure the right of municipalities to annex territory [by landowner petition], we see no constitutional objection.

Gorman v. City of Phoenix, 76 Ariz. 35, 40, 258 P.2d 424, 427 (1953) (citation omitted).

The Arizona annexation statute provides for the actual annexation to be by the governing body of the annexing city or town. A.R.S. § 9-471(A)(1). The petitioners are mere supplicants and have no power or right to require annexation. *City of Tucson v. Garrett,* 77 Ariz. at 76, 267 P.2d at 719. The decision to annex is entirely discretionary with the city or town's governing body. *Kempton v. City of Safford,* 140 Ariz. 539, 541, 683 P.2d 338, 340 (App. 1984). It has been said that the voting rights cases " 'create no constitutional rights in effected citizens concerning the procedure for creating or altering' any type of state district." *Township of Jefferson v. City of West Carrollton,* 517 F.Supp. at 420, (emphasis added) (quoting *Detroit Edison Co. v. East China Township School District No. 3,* 378 F.2d 255, 259 (1967). The Arizona Court of Appeals, in an equal protection challenge to the creation of a special improvement district, distinguished the analogy to a voting rights case stating the "obvious difference is that *Kolodziejski* dealt with election

procedures, whereas this case involves petitioning procedures to an executive body performing a delegated legislative duty." *Gillard v. Estrella Dells I Improvement District,* 25 Ariz. App. 141, 146, 541 P.2d 932, 937 (1975).

Finally, this court finds persuasive the several cases from other jurisdictions that have upheld annexation procedures similar to ours against equal protection claims and in doing so have refused to apply the compelling state interest test. *See Carlyn v. City of Akron,* 726 F.2d 287 (6th Cir. 1984) (no equal protection violation where no final authority on annexation is given to voters but instead to Board of County Commissioners); *Berry v. Bourne,* 588 F.2d 422 (4th Cir. 1978) (where challenged procedure does not involve nor contemplate an election there is no unconstitutional limitation upon the right to vote); *Township of Jefferson v. City of Carrollton, supra,* (unlike voting rights case where vote is final act triggering annexation, signing of petition is only necessary condition precedent); *Adams v. City of Colorado Springs,* 308 F.Supp. 1397 (D.Colo. 1970), *aff'd per mem.* 399 U.S. 901, 90 S.Ct. 2197, 26 L.Ed.2d 555 (1970) (cannot draft voting rights cases onto annexation law); *Doenges v. City of Salt Lake City,* 614 P.2d 1237 (Utah, 1980) (petition valid where final decision left up to the City Commission); *Torres v. Village of Capitan,* 92 N.M. 64, 582 P.2d 1277 (1978) (petitioning for annexation is not a fundamental voting right). *Cf. City of Seattle v. State,* 103 Wash.2d 663, _____, 694 P.2d 641, 646 (1985) (numerous cases approving statutory schemes granting property owners greater influence on the decision to annex, such as the right to initiate the annexation procedure are distinguishable from statutory schemes where the final decision on annexation is made in an election).

We conclude that the petitioning process utilized in A.R.S. § 9-471 is not analogous to voting, and therefore does not infringe on a fundamental right. Therefore, the proper test to apply in the case before us is the rational basis test. In reaching this decision, we agree with the *Berry* court that

" 'the Supreme Court's decision in *Hunter v. City of Pittsburgh* * * * continues to be the law, and we are not at liberty to limit the effect of this decision by drafting the voting rights decisions on to this annexation body of law.' " *Berry v. Bourne,* 588 F.2d at 424 (quoting *Adams v. City of Colorado Springs,* 308 F.Supp. 1397, 1404, *aff'd per mem,* 399 U.S. 901, 90 S.Ct. 2197, 26 L.Ed.2d 555).

In applying the rational basis test, the equal protection clause will not be violated if any set of facts can be reasonably perceived to sustain the classification. In other words, if there is a rational basis for the classification, there is no constitutional violation. *State v. Levy's,* 119 Ariz. 191, 192, 580 P.2d 329, 330 (1970).

We agree that there are rational bases for the property owner, non-property owner classification; namely, the effects of annexation such as susceptibility to property taxes and bond liens apply only to landowners; property owners face more of an increased financial burden; and municipalities will be severely handicapped if annexation required the approval of all voters in the area and it would hinder the orderly growth of Arizona cities and towns. The legislature intended that the permanency associated with a property owner be present in a signer of an annexation petition.

The court of appeals, in deciding this case below, recognized that there are important governmental interests present in annexation. *Goodyear Farms v. City of Avondale,* slip op. at 10, n.3. This court in *Gorman v. City of Phoenix* found a rational basis for the property owner classification stating:

> In other words, only those who are to bear the financial burdens of the city government are allowed to control the matter under this method of procedure. Likewise, it is most reasonable to assume the legislature had in mind the element of permanency. It would be unreasonable to attribute to the legislators an intention that any resident in the territory, even though perhaps temporarily residing therein, who might own some removable personal property could participate in saddling

on real property owners a permanent municipal tax burden.

76 Ariz. at 37, 258 P.2d at 425. The New Mexico Supreme Court upheld a procedure by which annexation was initiated upon a petition of the owners of a majority of acres in the territory to be annexed by simply stating, "[o]ne obvious and rational basis . . . is that taxes to support the Village will be partially apportioned in accordance with the amount of land owned . . ." *Torres v. Village of Capitan*, 92 N.M. at 70, 582 P.2d at 1283. Also in *Adams v. City of Colorado Springs, supra*, it was recognized that a municipality is severely handicapped by annexation procedures requiring approval of all property owners and electors in the area. 308 F.Supp. at 1404. It would be unable to deal with the people living just outside the city, enjoying its advantages without having to pay for them. Such persons would seldom consent to annexation and their nonconsent could threaten the core city. *Id.*

We point out that by finding a rational basis for this classification and upholding the annexation procedure provided in A.R.S. § 9-471, we are not depriving non-property owners from any voice in the annexation process. First, non-property owners may express their opinions, pro or con, to the governing body of the annexing city or town. It is who has the real power of approval or rejection over the annexation. *Kempton v. City of Safford, supra.* Second, the legislature has provided that any interested party may contest the validity of an annexation for failure to comply properly with the procedure set forth in A.R.S. § 9-471(A)(1) or (A)(2). *Gieszl v. Town of Gilbert*, 22 Ariz. App. 543, 529 P.2d 255 (1974), A.R.S. § 9-471(C). By this provision, a non-property owner can protect himself against an illegal annexation. Therefore, even though we recognize that non-property owners have an interest, in whether or not the area in which they reside is annexed, we find that the classification drawn by the legislature in A.R.S. § 9-471 is rational and furthers a legitimate state interest in the orderly and prosperous

growth of Arizona cities and towns. The Arizona annexation statute, A.R.S. § 9-471, is constitutional.

The opinion and decision of the court of appeals is vacated and the ruling of the trial court is affirmed.

JAMES DUKE CAMERON, Justice

CONCURRING:

WILLIAM A. HOLOHAN, Chief Justice

FRANK X. GORDON, JR., Vice Chief Justice

JACK D. H. HAYS, Justice

FELDMAN, Justice, dissenting

I do not agree with either of the majority's conclusions. First, I believe that the legislative classification which gives property owners the exclusive voice in the initiation of annexation is one which infringes upon the fundamental rights of residents who are not property owners. The effect of annexation on residents as well as property owners is substantial. *See* Note, The Right to Vote in Municipal Annexations, 88 HARVARD L. REV. 1571, 1594. It is true that the state does not have to deal with popular opinion at all in the annexation process. *City of Tucson v. Garrett*, 77 Ariz. 73, 267 P.2d 717 (1954). Nevertheless, when the state chooses to do so and makes petition to a city council the only method to initiate annexation of an unincorporated area, the state deals

with the political rights of those who live within the unincorporated area and must deal with all the people equally. *See Adams v. City of Colorado Springs*, 308 F.Supp. 1397 (1970), *aff'd.* 399 U.S. 901. 90 S.Ct. 2197 (1970).

The majority quotes extensively from *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79, 28 S.Ct. 40, 46 (1907). I believe that in the context of this present case *Hunter* does not stand for the proposition of absolute power for which it is cited. First, in *Hunter*, the dispute was over dilution of the voting rights of the smaller city's voters because a majority of the combined votes of both cities was necessary to annex. The issue was not whether some residents were excluded from the process. Second, the case arose under the contract clause, U.S. Const. art. 1, § 9 par. 10, with petitioner arguing that there was an impairment of the contract between the citizens and the city. The Supreme Court never addressed the questions of violations of due process or equal protection. Third, *Hunter* only applies to municipal property used for governmental purposes, *Id.* at 179, 285 S.Ct. at 47. It does not apply to municipal property used for private purposes, as to which "the legislature is not omnipotent."

Not only have concepts of due process and equal protection evolved in the past 80 years, but in *Hunter*, all voters in both cities were allowed to vote on the proposition. The premise of *Hunter* is that cities are creatures of the state, which I do not dispute. However, the issue in the present case is whether the legislature can deprive the class of resident non-landowners of a voice in the initial decision to become part of a city while granting it to non-resident landowners. *Hunter* is inapposite to this issue.

The ability to participate in the determination of the nature of the governmental entity that is to exercise power over one's person and one's family is a right of a fundamental nature. It is a right that is shared by residents and property owners in the area. *Curtis v. Board of Supervisors of Los Angeles County*, 7 Cal.3d 942, 960, 104 Cal.Rptr. 297, 309, 501 P.2d 537, 549 (1972). In my view, therefore, al-

though the right denied non-property owners in the present case is not an electoral right, it is one of fundamental importance in its impact upon residents and property owners alike.

The majority reasons that Curtis, *supra*, is inapplicable because the California court found "that barring an election touched upon and burdened the right to vote and [therefore] applied the compelling state interest test." (Slip op. at 9). A.R.S. § 9-471 has the same effect because, although it does not touch upon the right to vote, it does bar access to the annexation process. The California statute in *Curtis* allowed landowners to control the culmination of the annexation process — an election — while the Arizona statute allows landowners to control the initiation of an annexation which culminates in a vote by the city council. Both statutes interfere with the citizen's right of participation in the political process. The Arizona statute, like that held unconstitutional by the California court, touches upon fundamental political interests. It can be found valid only by applying strict scrutiny — the compelling state interest test. The majority errs in adopting and applying the rational basis test.

The majority also errs in holding that the statute passes even the rational basis test. The annexation statute makes two unconstitutional classifications. First it distinguishes between those who own taxable property and those who do not, excluding those who do not. The majority has identified no state interest to justify this exclusion. While the initial burdens of increased property taxation are placed on landowners, they are immediately passed on to consumers through increased rents and via increased prices. Further, landowners share equally with non-landowners the need for and benefits from all public services. *Curtis*, 7 Cal.3d at 961, 104 Cal.Rptr. at 310, 501 P.2d at 573.

The second major defective classification is that § 9-471 distinguishes by wealth even among the eligible landowners themselves by providing that owners of at least "one-half in value" of the property sign the petition. The greater the as-

sessed value of a parcel land, the greater the weight of that owner's signature. This classification cannot withstand any scrutiny. One landowner with substantial holdings could effectively block all action by a much greater number of people. This is fundamentally at odds with all notions of fairness and participation in the political process. It is patently exclusionary. *See Bullock v. Carter*, 405 U.S. 134, 142-44 (1972); Note, *supra* at note 129. This statute discriminates against all residents and small property owners who have the same interests in government services as wealthier owners. The state has no interest which can justify this exclusion.

Thus, even if we were to forego the strict scrutiny test and apply a rational basis analysis, this statute cannot survive. The majority argues (slip op. at 13-15) that there is a rational basis for the property - non-property classification because property owners pay taxes, must bear the financial burdens of annexation, and, therefore, have a real interest in whether their property is annexed or not. I concur in these sentiments, but find in them only a rational basis for inclusion of property owners in the process of determining whether a property should be annexed.

The question before us, however, is whether there is a rational basis for exclusion of residents in the areas who happen not to own property. While the majority argues (slip op. at 15) that non-property owners have some voice in the annexation process because they can argue to the city council or mount a court contest to the validity or legality of the annexation, I find the reasoning unpersuasive. It fails to explain why a non-resident owner who has never set foot in Arizona, and who may never intend to do so, may have the sole voice in determining whether the property is to be annexed; it fails to explain why those who reside on the property and whose vital interests will be affected by the question of annexation have no voice whatsoever and no method by which to even attempt to determine who will provide them with necessary governmental services.

The majority gives good reasons for giving property owners a voice in annexation. It gives no reasons, good or bad, rational or irrational, for excluding non-property owning residents from the annexation process. The majority has the issue backwards. In an equal protection analysis, the statute should not be sustained merely because there is a basis for the favorable treatment given to one class. There should also be some basis, either rational or compelling, for the discrimination against the other class. *See Harper v. Virginia State Board of Elections*, 383 U.S. 663, 666-67, 86 S.Ct. 1079, 1081 (1966), *Kramer v. Union Free School District*, 395 U.S. 612, 627-28, 89 S.Ct. 1886, 1890 (1969). No such basis is provided here. I submit that none exists. I agree with the opinion of the court of appeals and would hold the statute unconstitutional.

STANLEY G. FELDMAN, Justice

APPENDIX B

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE COMPANY, an Arizona corporation, Petitioners-Appellants, v. THE CITY OF AVONDALE, a municipal corporation, Respondent-Appellee.	1 CA-CIV 7127 DEPARTMENT D O P I N I O N

Appeal from the Superior of Maricopa County
Cause No. C-438574
The Honorable Rudolph J. Gerber, Judge
REVERSED AND REMANDED

Snell & Wilmer
By Richard K. Mahrle
Charles K. Ayers
Attorneys for Petitioners-Appellants — Phoenix

Frank L. Ross
Attorney for Respondent-Appellee — Litchfield Park

M E Y E R S 0 N, Presiding Judge

This appeal concerns the constitutionality of Arizona's annexation statute. A.R.S. § 9-471(A)(1)(Supp. 1984). We hold that this statute is unconstitutional in violation of the equal protection clauses of the United States and Arizona constitutions because it provides that only property owners may sign annexation petitions.

I. FACTS

In 1981, the City of Avondale adopted an annexation ordinance and therein annexed certain property contiguous to its boundaries. Petitioners-appellants Goodyear Farms, Litchfield Park Properties and Litchfield Park Service Company (collectively referred to herein as Goodyear Farms) are corporations which own property in the annexed area. Goodyear Farms brought suit against the City alleging that the annexation ordinance was unlawful and unconstitutional under a variety of theories. Although Goodyear Farms' complaint does not per se mention the equal protection clause, the parties' cross-motions for summary judgment are devoted primarily to this constitutional provision. The trial court granted the City's motion for summary judgment and entered judgment in favor of the City. Goodyear Farms then brought this appeal.

II. THE ANNEXATION STATUTE

Annexation statutes vary throughout the United States. *See generally* Comment, The Right to Vote in Municipal Annexations, 88 Harv. L. Rev. 1571 (1975)(Comment). Arizona is one of a number of states which provides "for expression of popular support or opposition to a proposed annexation through the signing of a petition." Comment at 1604. In Arizona, the annexation process may only be initiated as follows:

> A city or town may extend and increase its corporate limits in the following manner:
>
> On presentation of a petition in writing signed by the owners of not less than one-half in value of the real and personal property as would be subject to taxation by the city or town in the event of annexation, in any territory contiguous to the city or town, as shown by the last assessment of the property, not embraced within the city or town limits, the governing body of the city or town may, by ordinance, annex the territory to such city or town.

§ 9-471(A)(1). The annexation statute has been drafted to reflect the will of the territory to be annexed as well as the will of the city or town which has chosen to annex. The former is represented through petition signators constituting "the owners of not less than one-half in value of the real and personal property" which would be subject to taxation by the city or town. The latter is represented by the governing body of the city or town — the city or town council.

The petition must set forth a description of the exterior boundaries of the area proposed to be annexed. § 9-471(A)(2). Upon the first reading of the annexation ordinance, the city or town must file a copy of the ordinance, with an accurate map of the annexed area, in the office of the county recorder of the county where the area is located. § 9-471(A)(3). At this point, the area is withdrawn from further annexation by any other city or town. § 9-471(B). Within ten days, the city or town is required to send a written notice of the annexation proposal to each owner of real property located in the territory proposed to be annexed. *Id.* Any city or town, the attorney general, the county attorney or any other interested party may upon verified petition question the validity of the annexation for failure to comply with the provisions of the statute. § 9-471(C). Goodyear Farms brought its action pursuant to this provision. The annexation becomes final after the expiration of thirty days from the first reading of the ordinance. § 9-471(D).

III. CONSTITUTIONALITY OF THE ANNEXATION STATUTE

Goodyear Farms contends that the petitioning process under the annexation statute is sufficiently analogous to voting such that the United States Supreme Court's cases involving property-ownership restrictions on voting should be applicable. *E.g., Hill v. Stone*, 421 U.S. 289, 95 S. Ct. 1637, 44 L. Ed.2d 172 (1975); *Kramer v. Union Free School District*, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed.2d 583 (1969). The City contends that because the annexation statute "does not touch upon or burden the right to vote," these voting rights

cases should not apply. *Township of Jefferson v. City of West Carrollton*, 517 F. Supp. 417 (S.D. Ohio 1981), *aff'd*, 718 F.2d 1099 (6th Cir. 1983); *Doenges v. City of Salt Lake City*, 614 P.2d 1237 (Utah 1980). [1]

Although the state has wide discretion in fashioning municipal boundaries, *see State v. Downey*, 102 Ariz. 360, 430 P.2d 122 (1967), in exercising this authority, however, the state is subject to constitutional limitations. *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S. Ct. 125, 5 L.Ed.2d 110 (1960). Goodyear Farms strongly urges that petitioning for annexation is the functional equivalent of voting. If this were true, then the state's classification between nonproperty owners and property owners would be scrutinized under the compelling interest test. *Hill v. Stone*, 421 U.S. at 297. Because we have concluded that the classification in the annexation statute does not even survive the less stringent rational basis

---

[1] In *Gorman v. City of Phoenix*, 76 Ariz. 35, 258 P.2d 424 (1953), the Arizona Supreme Court rejected the contention that the "annexation statute is a method of voting analogous to and covered by the same general principles as primary and general elections." *Id.* at 40, 258 P.2d at 427. *See also City of Tucson v. Garrett*, 77 Ariz. 73, 267 P.2d 717 (1954); *Skinner v. City of Phoenix*, 54 Ariz. 316, 95 P.2d 424 (1939). These rulings have no bearing upon our decision because no consideration was given to the equal protection argument which is the core of the present dispute.

test, we need not decide whether the petitioning process here is comparable to voting. [2]

Under the rational basis standard of review, we must consider the character of the classification, the individual interests affected by the classification, and the government interest asserted in support of the classification. *State v. Kelly*, 111 Ariz. 181, 184, 526 P.2d 720, 723 (1974).

We recognize that a "legislative classification will not normally be set aside if any set of facts rationally justifying it is demonstrated or perceived by the courts." Id., 526 P.2d at 723.

The classification in the annexation statute touches upon and burdens an important right. The legislature has determined that annexation may only be accomplished through the initiation of a citizen petition. Thus, the sole opportunity for citizens in the annexed territory to express their approval (by signing the petition) or disapproval (by not signing the petition) of a proposed annexation is through the petition. The character of this classification, therefore, is one affecting a citizen's important interest in participation in a form of democratic expression engrafted by the legislature itself. "The signing of a petition for annexation is more than the exercise of a private right or of a property right. . . . [L]ike voting, [it] constitut[es] participation in a governmen-

---

[2] There are strong reasons to equate petitioning for annexation with voting. In Arizona, the right to petition is one of constitutional magnitude. Ariz. Const. art. II, § 5. As a matter of federal constitutional law, citizen actions involving zoning matters and land use decisions have been held to be protected activity under the first amendment's guarantee of the right to petition the government for redress of grievances. *E.g., Gorman Towers, Inc. v. Bogoslavsky*, 626 F.2d 607, 614-15 (8th Cir. 1980); *Sawmill Prod. Inc. v. Town of Cicero*, 477 F. Supp. 636, 642 (N.D. Ill. 1979).

"It would seem appropriate to apply the principles of the franchise restriction cases to [property ownership] restrictions on eligible [petition] signers, for both forms of restriction give a particular economic group a veto on a proposition with which others are also substantially concerned. Viewed in this light, such signer limitations appear clearly unconstitutional." Comment at 1607.

tal process . . . ." *Town of Fond du Lac v. City of Fond du Lac*, 22 Wis.2d 533, 539, 126 N.W.2d 201, 203-204 (1964).

It is no longer open to any doubt that nonproperty owners have as vital and substantial interest in municipal affairs as do property taxpayers. In *Cipriano v. City of Houma*, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed.2d 647 (1969), the Supreme Court invalidated a Louisiana law which gave only property taxpayers the right to vote in municipal elections to approve the issuance of utility revenue bonds. The Court found that the operation of the city's utility services affected virtually every resident. 395 U.S. at 705. The impact of the revenue bond issue was found to be unconnected to one's status as a property taxpayer because any "benefits and burdens of the bond issue fall indiscriminately on property owner and non-property owner alike." *Id.*

In *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed.2d 523 (1970), the Court struck down an Arizona constitutional provision which limited voting to real property taxpayers in elections authorizing the issuance of general obligation bonds. The City of Phoenix claimed that only property taxpayers could vote because under Arizona law property taxes were to be levied to service the bonds. The Supreme Court concluded that the differences between the interests of property owners and nonproperty owners were not "sufficiently substantial to justify excluding the latter [nonproperty owners] from the franchise." 399 U.S. at 209. The Court recognized that nonproperty owners had a substantial interest in public facilities and services; that revenues other than property taxes were used to satisfy more than half of the debt service; and that the ultimate burden of taxation was passed on to lessees of rental property in the form of higher rents.

Unquestionably, nonproperty owners residing in an area to be annexed have a substantial interest in the outcome of the annexation proceeding. D. Hagman & S. Disco, *One-Man One-Vote as a Constitutional Imperative for Needed Reform of Incorporation and Boundary Change Laws*, 2 Urb.

Law. 459, 464 (1970). Because the interests of residents in an area to be annexed are similar to the interests of those who reside in an area to be incorporated as a new city of town, a California Supreme Court decision is instructive.

> We can discern no reason . . . why landowners enjoy a greater interest, or nonlandowners a lesser interest, in the formation of a city of general powers than in its governance, or its issuance of general obligation bonds . . . .
>
> . . . Nonlandowners share an equal interest with landowners in the formation of a city which could provide police and fire protection, maintain roads, acquire and develop parks, and furnish other public services. Moreover, cities derive revenue from many sources besides property taxes. Property taxes are levied on land and improvements, not land alone, and their burden includes tenants as well as landowners. Zoning laws and land use regulations affect not only the landowner but his neighbors; and their direct effect on the landowner cannot be measured in terms of assessed value.

Curtis v. Board of Supervisors, 7 Cal.3d 942, 960-61, 501 P.2d 537, 550, 104 Cal. Rptr. 297, 310 (1972). In *Curtis*,the California Supreme Court held unconstitutional a California statute which granted landowners the power to terminate an election for the incorporation of a new city. The interests of nonproperty owners in the formation of a new city are almost identical to the interests of nonproperty owners who reside in an area which may be annexed. Indeed, the logic of *Curtis* was extended to California's annexation statute in *Levinsohn v. City of San Rafael*, 40 Cal. App.3d 656, 115 Cal. Rptr. 309 (1974). The court noted that the unincorporated area "provides general public services and facilities and seeks to ameliorate these by annexation to a municipal body which presumably will improve the quality and extent of these services. Such annexation concerns landowners and nonlandowners alike." *Id.* at 660-61, 115 Cal. Rptr. at 311 (emphasis added). We agree that annexation affects governmental services and regulations as well as tax levels and that

all citizens have a vital interest in annexation, regardless of whether they own property subject to taxation.

Although the City of Avondale offers no specific defense of the interests of real and personal property owners in the annexation process,[3] we readily acknowledge that their interests are important. But the relevant inquiry is whether or not there is a genuine difference between the interests of the classes which the legislature has created. *See Kramer v. Union Free School District*, 395 U.S. at 632. We see no significant or substantial difference between the class of nonproperty owners and the class of real and personal property owners to constitutionally justify the exclusion of the former from the petitioning process.

Because the classification between property owners and nonproperty owners (1) affects important legislatively-created rights; (2) excludes from participation those with substantial interests in the outcome of the annexation proceedings; and (3) does not further any articulable state interest, we hold that A.R.S. § 9-471(A)(1)(Supp. 1984) is unconstitutional insofar as it excludes nonproperty owners from signing annexation petitions. This decision shall apply prospectively and to all annexation proceedings which have not become final, A.R.S. § 9-471(D) (Supp. 1984), as of April 25, 1985. *See City of Phoenix v. Kolodziejski*, 399 U.S. at 213-14.

---

[3] The City contends that the state has a compelling interest in providing for the orderly growth of cities and the orderly extension of basic governmental services. We agree that there are important governmental interests. The City fails to explain, however, how the property-ownership restriction furthers these interests.

The judgment in favor of the City of Avondale is reversed. This matter is remanded to the trial court with instructions that judgment shall be entered in favor of Goodyear Farms in accordance with this opinion.

/s/
Bruce Meyerson, Presiding Judge

CONCURRING:

/s/
Sarah D. Grant, Judge

/s/
Levi Ray Haire, Judge

APPENDIX C

FRANK L. ROSS
501 West Van Buren
Suite W
Avondale, Arizona 85323
(602) 932-5055

Attorney for Defendant,
CITY OF AVONDALE

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

GOODYEAR FARMS, an Arizona corporation; et al., Plaintiffs, vs. THE CITY OF AVONDALE, a municipal corporation; and ROBERT K. CORBIN, Attorney General of the State of Arizona, Defendants.	NO. C438574 JUDGMENT [filed April 19, 1983]

The Court having considered Motions for Summary Judgment filed by both parties;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiffs' Motion for Summary Judgment is denied.

2. Defendant's Motion for Summary Judgment is granted.

3. Judgment is hereby entered in favor of Defendant, THE CITY OF AVONDALE, against all Plaintiffs, on all Counts, in Plaintiffs' Complaint.

4. Defendant, THE CITY OF AVONDALE, is awarded all costs incurred herein.

DONE IN OPEN COURT this 19th day of April, 1983.

/s/ R. Gerber
JUDGE OF SUPERIOR COURT

Original Judgment lodged with the Court this 28th day of March, 1983

Copy of the foregoing Judgment delivered this 28th day of March, 1983, to:

RICHARD K. MAHRLE
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073
Attorneys for Plaintiffs

IN THE SUPERIOR COURT
OF MARICOPA COUNTY
STATE OF ARIZONA

Goodyear Farms
vs.
City of Avondale

C 438574

[Filed March 21, 1983]

This is the time set for oral argument on Plaintiff's Motion for Summary Judgment. The Plaintiff and Defendant are represented by counsel above-named. Court Reporter is not present. Motion is argued to the Court.

The Court finding the annexation procedure constitutional,

IT IS ORDERED granting Defendant's Motion for Summary Judgment and denying Plaintiff's Motion for Summary Judgment.

WILSON D. PALMER, Clerk

By Vandemeir
Deputy Clerk of the Court

APPENDIX D

John J. Bouma
Eileen J. Moore
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073
(602) 257-7216

Attorneys for Petitioners-Appellants

IN THE
SUPREME COURT
STATE OF ARIZONA

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE COMPANY, an Arizona Corporation,

Petitioners-Appellants

v.

THE CITY OF AVONDALE, a municipal corporation,

Respondent-Appellee

Supreme Court No. 18275-PR

1 CA-CIV 7127

Maricopa County Superior Court No. C-438574

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that petitioners/appellants GOODYEAR FARMS, LITCHFIELD PARK PROPERTIES and LITCHFIELD PARK SERVICE COMPANY hereby appeal to the Supreme Court of the United States from the judgment, decision and opinion of the Arizona Supreme Court, dated January 13, 1986, vacating the opinion of the Arizona Court of Appeals and affirming the ruling of the trial court.

This appeal is taken under 28 U.S.C. § 1257(2).

DATED this 21st day of March, 1986.

SNELL & WILMER

By /s/
John J. Bouma
Eileen J. Moore
3100 Valley Bank Center
Phoenix, Arizona 85073
Attorneys for Petitioners-
Appellants

AFFIDAVIT OF SERVICE

EILEEN J. MOORE, being first duly sworn upon oath deposes and says:

That pursuant to Rule 10 and Rule 28.3 of the United States Supreme Court Rules, she has this day made service of the foregoing Notice of Appeal by causing to be mailed, first class postage pre-paid, one copy of said Notice of Appeal to:

Frank L. Ross, Esq.
P.O. Box 597
Litchfield Park, Arizona
Attorneys for Respondent-Appellee

John P. Frank, Esq.
Michael O. Miller, Esq.
LEWIS & ROCA
100 West Washington Street
Phoenix, Arizona 85003
Attorneys for Amicus Curiae,
AMCOR Investment Corp.

J. LaMar Shelly, Esq.
General Counsel
48 North MacDonald Street
Mesa, Arizona 85201
Attorneys for Amicus Curiae
The League of Arizona Cities and Towns

Rex E. Lee, Esq.
SIDLEY & AUSTIN
Special Counsel
1722 Eye Street, N.W.
Washington, D.C. 20006
Attorneys for Amicus Curiae
The League of Arizona Cities and Towns

John T. Moshier, Esq.
Katherine M. Harmeyer, Esq.
EVANS, KITCHEL & JENCKES, P.C.
2600 North Central Avenue
Phoenix, Arizona 85004
Attorneys for Amicus Curiae
Town of Gilbert, et al.

Jay M. Martinez, Esq.
Susan D. Goodwin, Esq.
MARTINEZ & CURTIS, P.C.
2712 North Seventh Street
Phoenix, Arizona 85006
Attorneys for Amicus Curiae
Town of Gilbert, et al.

Robert K. Corbin, Esq.
Attorney General for the State of Arizona
Anthony B. Ching, Solicitor General
Toni McClory, Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007

All parties required to be served have been served.

DATED this 21st day of March, 1986.

/s/
EILEEN J. MOORE

SUBSCRIBED AND SWORN TO before me this 21st day of March, 1986.

/s/
NOTARY PUBLIC

My Commission Expires:

_____

APPENDIX E
ARIZONA REVISED STATUTES § 9-471

§ 9-471. Annexation by petition

A. A city or town may extend and increase its corporate limits in the following manner:

1. On presentation of a petition in writing signed by the owners of not less than one-half in value of the real and personal property as would be subject to taxation by the city or town in the event of annexation, in any territory contiguous to the city or town, as shown by the last assessment of the property, and not embraced within the city or town limits, the governing body of the city or town may, by ordinance, annex the territory to such city or town.

2. The petition submitted to the owners of property for their signature shall set forth a description of all the exterior boundaries of the exterior area proposed to be annexed to the city or town. The petition shall have attached to it at all times an accurate map of the territory desired to be annexed, and no addition or alterations increasing the territory sought to be annexed shall be made after the petition to which it is attached has been signed by any owner of property in such territory, but a reduction in the territory sought to be annexed may be made.

3. After the first reading of the ordinance annexing the territory by the governing body of the city or town, the city or town shall file a copy of the ordinance, with an accurate map of the territory annexed, certified by the mayor of the city or town, in the office of the county recorder of the county where the annexed territory is located.

B. Upon the first reading of the ordinance annexing the territory, the territory shall be withdrawn from further annexation by any other city or town for a period of sixty-one days from the date of such first reading. Within ten days from the date of the first reading the governing body of the city or town shall send by first class mail written notice of the annexation proposal to each owner of real property as

shown on the list of property owners furnished pursuant to subsection F in the territory proposed to be annexed.

C. Any city or town, the attorney general, the county attorney or other interested party may upon verified petition move to question the validity of the annexation for failure to comply with the provisions of subsection A, paragraphs 1 and 2, or subsection B. The petition shall set forth a manner in which it is alleged the city or town has failed to comply with the provisions of subsection A, paragraphs 1 and 2 or subsection B and shall be filed within thirty days of the first reading of the ordinance annexing the territory by the governing body of the city or town and not otherwise. The burden of proof shall be upon the petitioner to prove the material allegations of his verified petition. No action shall be brought to question the validity of an annexation ordinance unless provided within the time and for the reasons provided in this subsection. All hearings provided by this section and all appeals therefrom shall be preferred and heard and determined in preference to all other civil matters, except election actions. In the event more than one petition questioning the validity of an annexation ordinance is filed, all such petitions shall be consolidated for hearing.

D. The annexation shall become final after the expiration of thirty days from the first reading of the ordinance annexing the territory by the city or town governing body, provided the annexation ordinance has been finally adopted in accordance with procedures established by statute, charter provisions, or local ordinances, whichever is applicable, subject to the review of the court to determine the validity thereof if petitions in objection have been filed.

E. For the purpose of determining the sufficiency of the percentage of the value of property under this section, such values of property shall be determined as follows:

1. In the case of property assessed by the county assessor, value shall be the same as shown by the last assessment of the property.

2. In the case of property valued by the department of revenue, values shall be appraised by the department in the manner provided by law for municipal assessment purposes.

F. The county assessor and the department of revenue, respectively, shall furnish to the city or town within thirty days after the request therefor a statement in writing showing the owner, the address of each owner and the appraisal and assessment of all such property.

G. Territory is not contiguous for the purpose of subsection A, paragraph 1, unless:

1. It adjoins the exterior boundary of the annexing city or town for at least three hundred feet.

2. It is, at all points, at least two hundred feet in width, exclusive of highways.

3. The distance from the existing boundary of the annexing city or town where it adjoins the annexed territory to the furthest point of the annexed territory from such boundary is no more than twice the width of the annexed territory.

H. A city or town shall not annex territory if as a result of such annexation unincorporated territory is completely surrounded by the annexing city or town.

I. Notwithstanding any provisions of this article to the contrary, any town incorporated prior to 1950 which had a population of less than two thousand by the 1970 census and which is bordered on at least three sides by Indian lands may annex by ordinance territory owned by the state within the same county for a new townsite which is not contiguous to the existing boundaries of the town.

J. The provisions of subsections G and H shall not apply to territory which is surrounded by the same city or town or which is bordered by the same city or town on at least three sides.

FILED
MAY 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1690

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

GOODYEAR FARMS, *et al.*,
Appellants,

v.

THE CITY OF AVONDALE,
Appellee.

On Appeal from the Supreme Court of the State of Arizona

MOTION TO DISMISS OR AFFIRM

FRANK L. ROSS
P.O. Box 597
Litchfield Park, AZ 85340
(602) 935-1177

REX E. LEE *
CARTER G. PHILLIPS
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-4000

Counsel for Appellee

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether the State of Arizona's annexation statute, which permits the owners of half of the value of the property to be annexed to initiate the annexation process by petition, violates the Equal Protection Clause of the Fourteenth Amendment because non-owners of property are excluded from the petitioning process.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT	2
ARGUMENT	4
CONCLUSION	9

TABLE OF AUTHORITIES

Cases:	Page
Adams v. *City of Colorado Springs*, 399 U.S. 901 (1970), *aff'g*, 308 F. Supp. 1397 (D. Colo.)	4, 5
Arlington Heights v. *Metropolitan Housing Corp.*, 429 U.S. 252 (1977)	10
Ball v. *James*, 451 U.S. 355 (1981)	8
Berry v. *Bourne*, 588 F.2d 422 (4th Cir. 1978)	6
Carlyn v. *City of Akron*, 726 F.2d 287 (6th Cir. 1984)	6
Cipriano v. *City of Houma*, 395 U.S. 701 (1969)	7
City of Phoenix v. *Kolodziejski*, 399 U.S. 204 (1970)	7
Curtis v. *Board of Supervisors*, 7 Cal. 3d 942, 104 Cal. Rptr. 297, 501 P.2d 537 (1972)	7
Dandridge v. *Williams*, 397 U.S. 471 (1970)	5, 9
Doenges v. *City of Salt Lake City*, 614 P.2d 1237 (Utah 1980)	6
Hill v. *Stone*, 421 U.S. 289 (1975)	7
Hunter v. *City of Pittsburgh*, 207 U.S. 161 (1907)	5
Kramer v. *Union Free School District*, 395 U.S. 701 (1969)	7
Levinsohn v. *City of San Rafael*, 40 Cal. App. 3d 656, 115 Cal. Rptr. 309 (1974)	7
Lindsley v. *Natural Carbonic Gas Co.*, 220 U.S. 61 (1911)	9
Sailors v. *Board of Education*, 387 U.S. 105 (1967)	5, 6
Salyer Land Co. v. *Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973)	8
San Antonio Independent School District v. *Rodriguez*, 411 U.S. 1 (1973)	5
Singleton v. *Wulff*, 428 U.S. 106 (1976)	10
Tileston v. *Ullman*, 318 U.S. 44 (1943)	10
Torres v. *Village of Capitan*, 92 N.M. 64, 582 P.2d 1277 (1978)	6
Town of Fond Du Lac v. *City of Fond Du Lac*, 22 Wis. 2d 533, 126 N.W.2d 201 (1964)	6
Township of Jefferson v. *City of West Carrollton*, 517 F. Supp. 417 (S.D. Ohio 1981), *aff'd*, 718 F.2d 1099 (6th Cir. 1983)	6

TABLE OF AUTHORITIES—Continued

	Page
Valley Forge College v. *Americans United*, 454 U.S. 464 (1982)	10
Warth v. *Seldin*, 422 U.S. 490 (1975)	10
Weber v. *City Council of Thousand Oaks*, 9 Cal. 3d 950, 109 Cal. Rptr. 553, 513 P.2d 601 (1973)	7
Statutes:	
28 USC § 1257(2)	2
Ariz. Rev. Stat. § 9-471	2
Ariz. Rev. Stat. § 9-471(A)	2
Arix. Rec. Stat. § 9-471 (1986 Amend.)	3
Miscellaneous:	
Eickhoff, R. & Meier, M., *McQuillin on the Law of Municipal Corporations* (3d ed. 1979)	5, 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1690

GOODYEAR FARMS, *et al.*,

Appellants,

v.

THE CITY OF AVONDALE,

Appellee.

On Appeal from the Supreme Court of the State of Arizona

MOTION TO DISMISS OR AFFIRM

Appellee, the City of Avondale, respectfully moves this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Arizona on the ground that the federal question upon which the appeal to this Court depends is so unsubstantial as not to need further argument. Sup. Ct. R. 16.1.

OPINIONS BELOW

The opinion of the Supreme Court of Arizona (J.S. App. A1-A18) is reported at 714 P.2d 386. The opinion of the Court of Appeals of Arizona (J.S. App. B1-B9) is not reported.

JURISDICTION

The judgment of the Supreme Court of Arizona was entered on January 13, 1986. Notice of appeal was filed on March 21, 1986, and the jurisdictional statement was filed on April 14, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2).

STATEMENT

1. In Arizona, a city or town is permitted to annex property pursuant to the procedure set out in Ariz. Rev. Stat. § 9-471 (hereafter "§ 9-471"). Under that statute, annexation can be initiated only

> [o]n presentation of a petition in writing signed by the owners of not less than one-half in value of the real and personal property as would be subject to taxation by the city or town in the event of annexation, in any territory contiguous to the city or town. . . .

Ariz. Rev. Stat. 9-471(A)(1). Once a satisfactory petition is presented to the annexing city or town, "the governing body of the city or town" can then enact an ordinance effecting the annexation.

In 1981, a petition was circulated among the property owners in an area adjacent to the City of Avondale. J.S. App. A3. Property owners representing more than one-half of the taxable real and personal property in the affected area signed the petition and it was presented to the City as a request for annexation. *Ibid.* On May 26, 1981, an ordinance was passed annexing the property to the City. *Ibid.*

2. Appellants are property owners in the area of the proposed annexation. After the City adopted its ordinance annexing the area, appellants filed the instant lawsuit against the City in the Superior Court of Maricopa County, challenging the constitutionality of the annexation procedure embodied in § 9-471. They alleged

specifically that the exclusion of non-property owners from the petitioning process violated the Equal Protection Clause of the Fourteenth Amendment. The trial court granted the City's motion for summary judgment. J.S. App. B2.[1]

The court of appeals reversed. J.S. App. B1-B9. The court expressly declined to decide whether the petitioning process could be compared to voting for purposes of deciding what standard of judicial review to apply to the annexation statute. *Id.* at B4-B5. Instead, the court held that, even under a "rational relationship" standard, the statute was unconstitutional. The court reasoned that all residents have a substantial interest in annexation and that there was "no significant or substantial difference between the class of non-property owners and the class of real and personal property owners to constitutionally justify the exclusion of the former from the petitioning process." *Id.* at B8.

The Arizona Supreme Court reversed. J.S. App. A1-A18. It held that there is no constitutional right to vote in an annexation proceeding and that Arizona in its statute clearly does not equate petitioning with voting. *Id.* at A6-A10. The court rejected appellants' claim that petitioning is analogous to voting for purposes of an equal protection analysis. Accordingly, the court held that the "rational relationship" test of judicial review was appropriate in this case. *Id.* at A11-A12. The Arizona Supreme Court upheld § 9-471 because the greater

---

[1] Subsequent to the entry of judgment by the Arizona Supreme Court, the Arizona Legislature enacted House Bill 2189, which amends § 9-471. Under the new law, annexation can be initiated only upon "a petition in writing signed by the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of annexation. . . ." Ariz. Rev. Stat. § 9-471 (1986 Amend.) The new Act thus does not alter the annexation process in any way that would affect the proper resolution of this case. Both laws rely upon property owners to initiate the annexation process.

voice afforded to property owners in the annexation process rationally protected their greater interest in being subject to the annexing city's property taxes and bond liens after annexation. J.S. App. A12. In addition, the court held that inclusion of all electors would complicate the annexation process and thereby "hinder the orderly growth of Arizona cities and towns." *Ibid.*[2]

ARGUMENT

The decision of the Arizona Supreme Court rejecting appellants' claim that § 9-471 should be reviewed judicially under the "compelling state interest" standard of the Equal Protection Clause and finding a rational basis for the legislative classification embodied in Arizona's annexation procedure is directly supported by decisions of this Court, particularly *Adams* v. *City of Colorado Springs*, 399 U.S. 901 (1970), *aff'g*, 308 F. Supp. 1397 (D. Colo.). Moreover, the decision below conflicts with no decision of any other court and involves a statutory procedure that appears to be unique. Under these circumstances, there is no substantial federal question presented which warrants plenary review by this Court.

1. Appellants ask (J.S. 3-4) this Court to hold that residents of a territory subject to potential annexation should have a constitutional right to vote in any annexation proceeding. They base this claim solely on the ground that annexation is important to all residents of the annexed area, and therefore, all should have a say in whether annexation is permitted.[3]

---

[2] The court did not consider whether appellants, who own property and therefore are not in the class arguably disadvantaged by the exclusion of non-property owners, lacked "standing" to challenge the annexation statute. The court held that "standing" was not required to prosecute a state court lawsuit. J.S. App. A3 n.1.

[3] This argument would be more persuasive if it were being presented to a state legislature and not to this Court. Most states do

This Court long ago made clear, however, that, even though annexation decisions may cause residents to "suffer inconvenience, and their property may be lessened by the burden of increased taxation, or for any other reason, . . . there is nothing in the Federal Constitution which protects them from these injurious consequences." *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 179 (1907). Indeed, the Court has routinely rejected arguments in other contexts to employ strict scrutiny under the Equal Protection Clause based on claims that the subject matter being regulated was particularly important to the individual. See *e.g.*, *Dandridge* v. *Williams*, 397 U.S. 471 (1970) (welfare); *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973) (education).

Relying upon *Hunter*, a three-judge district court in *Adams* v. *City of Colorado Springs*, 308 F. Supp. 1397, 1403 (D. Colo. 1970) (emphasis in original), held unequivocally that "there is no absolute constitutional right under the *due process* clause of the Fourteenth Amendment to vote on a proposed annexation." In *Adams*, residents in an annexed area challenged a state law which permitted the annexing City to annex their territory without obtaining any prior approval because of the extent of the territory's contiguity to the City, but permitted residents in other areas which had less contiguity to vote or petition before annexation could be approved by the City. The district court concluded that this classification, which, if anything, is more insensitive to voting rights than the Arizona statute, should be reviewed under a rational relationship test and held that the state law was clearly constitutional. 308 F. Supp. at 1402-1405. This Court affirmed that judgment summarily. 399 U.S. 901 (1970). *See Sailors* v. *Board of Education*, 387 U.S.

---

permit residents in areas subject to potential annexation to vote on the issue. R. Eickhoff & M. Meier, *McQuillin on the Law of Municipal Corporations* § 7.16 (3d ed. 1979).

105 (1967) (holding no right to vote for members of board of education). Thus, appellants' claim that there should be a constitutionally recognized right to vote in an annexation proceeding is clearly precluded by prior decisions of this Court.[4]

Appellants alternatively assert (J.S. 5) that the Court should equate the petitioning process in § 9-471 with voting and therefore hold that Arizona in effect requires voting in annexation proceedings. From this they argue that any restriction on this quasi-right to vote should be reviewed under standards employed in other voting rights cases. But, it is sheer boot-strapping in the annexation context to argue that, even if there is no right to vote, the Court still has authority to treat non-voting annexation procedures as though they involve voting and thereby require the state to demonstrate a "compelling state interest" for its procedure. Whether voting is provided for is solely a matter of state law.[5]

---

[4] Lower federal and state courts have consistently rejected claims similar to appellants' that states are constitutionally obliged to permit voting as a condition of annexation. *See, e.g., Carlyn* v. *City of Akron*, 726 F.2d 287 (6th Cir. 1984); *Berry* v. *Bourne*, 588 F.2d 422 (4th Cir. 1978); *Township of Jefferson* v. *City of West Carrollton*, 517 F. Supp. 417 (S.D. Ohio 1981), *aff'd*, 718 F.2d 1099 (6th Cir. 1983); *Doenges* v. *City of Salt Lake City*, 614 P.2d 1237 (Utah 1980); *Torres* v. *Village of Capitan*, 92 N.M. 64, 582 P.2d 1277 (1978).

[5] The state court cases relied upon by appellants do not conflict with the decision below. In *Town of Fond Du Lac* v. *City of Fond Du Lac*, 22 Wis. 2d 533, 126 N.W.2d 201 (1964), the constitutionality of the Wisconsin annexation statute was not even in question. The Wisconsin statute provided that contiguous territory could be annexed by a city on receipt of a petition filed with the city signed by a majority of the *electors* residing within such territory, and the owners of one-half (½) of the land in the area within such territory. The question was whether the annexation was void because the city had used economic pressure in securing the signatures of electors on the petition, and because the council had deliberately prevented some of the electors from having an opportunity to sign

In Arizona, petitioning is plainly not voting; as the Arizona Supreme Court conclusively held below (J.S. App. A7), "A.R.S. § 9-471 does not . . . provide for an election on the issue of annexation." No decision of this Court, even outside of the annexation context, has ever expanded the right to vote to a situation where no election is held. All of the cases cited by appellants as involving "exclusion of non-property owning residents from participation in a political decision" (J.S. 4) were cases where an election was expressly provided for under state law. See *Hill* v. *Stone*, 421 U.S. 289 (1975); *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969); *Cipriano* v. *City of Houma*, 395 U.S. 701 (1969); *City of Phoenix* v. *Kolodziejski*, 399 U.S. 204 (1970). Thus, the holding of the Arizona Supreme Court properly respected the bright-line principle embodied in this Court's decisions that heightened scrutiny is warranted only if the state grants a voting right in an election and then attempts to restrict it.[6]

---

the petitions. The Wisconsin Supreme Court held that the signatures of the electors who succumbed to economic pressure and signed the petitions were invalid, and thus that the annexation failed for want of signatures of the majority of electors.

Thus, nothing in that case indicates that the court would apply heightened scrutiny under the Equal Protection Clause to an annexation procedure which was initiated by a petition of property owners.

Similarly inapposite are the California decisions, which held that petitioning which could block an incorporation election that was expressly provided for by state law, constituted an interference with a voting right. *Curtis* v. *Board of Supervisors*, 7 Cal. 3d 942, 104 Cal. Rptr. 297, 501 P.2d 537 (1972); *Levinsohn* v. *City of San Rafael*, 40 Cal. App. 3d 656, 115 Cal. Rptr. 309 (1974). As the Arizona Supreme Court explained (J.S. App. A9), there is no election provided for in § 9-471, and therefore, no interference with voting rights. *See Weber* v. *City Council of Thousand Oaks*, 9 Cal. 3d 950, 109 Cal. Rptr. 553, 513 P.2d 601 (1973).

[6] The only instances where this Court has deviated from the basic rule are cases which appellants acknowledge (J.S. 6) provide no help to them. Even when an election is provided for under state law, the Court has held in some circumstances that restrictions on

2. Appellants argue (J.S. 7-8) that, even if § 9-471 is subject to minimal scrutiny under the Equal Protection Clause, Arizona's decision to favor property owners by permitting them to participate in the petitioning process is nevertheless an irrational classification in violation of that provision. This claim involves no substantial legal issue warranting plenary review; moreover, the holding of the Arizona Supreme Court that the classification is rational is clearly correct.

Appellants in effect concede (J.S. 7) that the distinction is rational because they acknowledge the obvious and unique interest of property owners in being subjected to the property taxing power of the annexing city or town. It is certainly rational for a legislature to conclude that this interest is so dominant that without the consent of most of those people whose property will be taxed no annexation should be permitted.

Appellants complain (J.S. 7) that the Arizona Supreme Court failed to explain why non-property owners should be excluded completely from the process. But, the court found expressly that including all electors in the process would severely "hinder" the annexation process and impair urban development. That same finding was made in *Adams* to justify the distinction in the Colorado statute and this Court affirmed. 308 F. Supp. at 1404, *aff'd*, 390 U.S. 9017. Thus, the Arizona Supreme Court properly held that § 9-471's exclusion of non-property owners is rational.

---

voting are constitutionally permissible. *See, e.g., Salyer Land Co.* v. *Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973); *Ball* v. *James*, 451 U.S. 355 (1981). Appellants argue that the holdings in those cases, when the right to vote was limited to property owners, should not extend to this case. But, the Court has no reason to consider that issue in this case because the basic factual predicate for the issue in those cases—the holding of an election—is missing here. Thus, there is no attempt to restrict who can *vote*. No one votes.

Finally, appellants assert (J.S. 7) that some property owners may have very little interest in the annexation decision and some non-property owners may have a significant stake in that process. But, this Court has long held that a classification subject to minimal scrutiny need not satisfy "mathematical nicety," *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911). See *Dandridge* v. *Williams*, 397 U.S. at 486. It is sufficient that it is reasonable to assume that property owners as a whole have a greater stake than non-property owners in the outcome of an annexation proceeding.[7]

CONCLUSION

The appeal should be dismissed for want of a substantial federal question or the judgment of the Arizona Supreme Court should be affirmed.[8]

---

[7] Appellants have cited no other state statute which is even similar to § 9-471, and indeed, it is unlikely that any such statute exists. *See* McQuillin, supra, § 7.16. Thus, the issue presented in this case has an extremely narrow compass, and does not warrant plenary review by this Court.

[8] Although the Arizona Supreme Court did not address the standing issue because the court held that standing is not a bar to bringing a lawsuit in state court, it is clear that appellants must establish Article III standing in order to invoke the jurisdiction of this Court. Appellants appear to have standing to argue that they have a constitutional right to vote in an election on the annexation issue. Arizona law clearly does not permit such a vote, and therefore, if such a right existed, which it does not, then appellants would have been denied that right. As discussed above, appellants' right to vote argument is clearly controlled by prior precedents of this Court.

Appellants would seem to lack standing to challenge the petitioning process as an election limited to non-property owners. To the extent the petition supporting annexation in this case could be characterized as an election, appellants clearly had a voice in it. They were property owners whose presumed refusal to sign the petition is the same as a vote against annexation. Thus, their rights were fully protected. Appellants' claim is therefore based

Respectfully submitted

FRANK L. ROSS
P.O. Box 597
Litchfield Park, AZ 85340
(602) 935-1177

REX E. LEE *
CARTER G. PHILLIPS
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-4000

Counsel for Appellee

* Counsel of Record

May 30, 1986

---

on injury to the rights of third persons, who may not even exist, which a litigant ordinarily has no standing to assert in a federal court. *See, e.g., Valley Forge College* v. *Americans United*, 454 U.S. 464, 472-474 (1982); *Arlington Heights* v. *Metropolitan Housing Corp.*, 429 U.S. 252, 263 (1977); *Singleton* v. *Wulff*, 428 U.S. 106, 112-114 (1976); *Warth* v. *Seldin*, 422 U.S. 490, 498-501, 511 (1975); *Tileston* v. *Ullman*, 318 U.S. 44, 46 (1943).

In any event, because appellants appear to have standing to present their right-to-vote claim, the appeal should be dismissed for want of a substantial federal question and not for want of jurisdiction.

No. 85-1690

UNITED STATES SUPREME COURT

October Term, 1985

Supreme Court, U.S.
FILED
MAY 28 1986
JOSEPH F. SPANIOL, JR.
CLERK

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE, an Arizona corporation,
Appellants,

v.

THE CITY OF AVONDALE,
a municipal corporation,
Appellee,

On appeal from the
Supreme Court of the
State of Arizona

MOTION OF THE STATE OF ARIZONA FOR LEAVE TO INTERVENE

ROBERT K. CORBIN
Attorney General
State of Arizona

ANTHONY B. CHING
Solicitor General

TONI McCLORY
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
(602) 255-3333

Attorneys for the State
of Arizona, Intervenor

No. 85-1690

UNITED STATES SUPREME COURT

October Term, 1985

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE, an Arizona corporation,
Appellants,

v.

THE CITY OF AVONDALE,
a municipal corporation,
Appellee,

MOTION OF THE STATE OF ARIZONA FOR LEAVE TO INTERVENE

Pursuant to 28 U.S.C. § 2403(b) and Supreme Court Rule 28.4(c), the State of Arizona moves the Court for leave to intervene in the above-entitled action and to file its Motion to Dismiss or Affirm.

This motion is made on the ground that the constitutionality of a state statute affecting the public interest is being challenged, and the State of Arizo-

na is not a party to this appeal. The State accordingly seeks leave to intervene to defend the constitutionality of its law.

Respectfully resubmitted[1] this 4th day of June, 1986.

ROBERT K. CORBIN
Attorney General
State of Arizona

ANTHONY B. CHING
Solicitor General

TONI McCLORY
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
(602) 255-3333
Attorneys for the State
of Arizona

---

1. Pursuant to the telephonic directive of the Clerk's Office of the Supreme Court of the United States.

CERTIFICATE OF SERVICE

I, Toni McClory, counsel of record for the State of Arizona and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 4th day of June, 1986 I served three copies of this motion on each of the following parties:

1. On appellants Goodyear Farms, Litchfield Park Properties, and Litchfield Park Service Company, by mailing three copies in a duly addressed envelope with first class postage prepaid to its counsel of record as follows:

John J. Bouma, Esq.
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073

2. On appellee City of Avondale, by mailing three copies in a duly addressed envelope with first class postage prepaid to its counsel of record as follows:

Rex E. Lee, Esq.
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006

3. On amicus curiae AMCOR Investment Corporation by mailing three copies in a duly addressed envelope with first class postage prepaid to its counsel of record as follows:

John P. Frank, Esq.
Michael O. Miller, Esq.
LEWIS & ROCA
100 West Washington Street
Phoenix, Arizona 85003

4. On amicus curiae Town of Gilbert by mailing three copies in a duly addressed envelope with first class postage prepaid to its counsel of record as follows:

John T. Moshier, Esq.
Katherine M. Harmeyer, Esq.
EVANS, KITCHELL & JENCKES, P.C.
2600 North Central AVenue
Phoenix, Arizona 85004

Jay M. Martinez, Esq.
Susan D. Goodwin, Esq.
MARTINEZ & CURTIS, P.C.
2712 North Seventh Street
Phoenix, Arizona 85006

5. On amicus curiae League of Arizona Cities and Towns by mailing three copies in a duly addressed envelope with first class postage prepaid to its counsel of record as follows:

J. LaMar Shelley, Esq.
48 North MacDonald Street
Mesa, Arizona 85201

I further certify that to the best of my knowledge all parties required to be served have been served.

Respectfully submitted this 4th day of June, 1986.

ROBERT K. CORBIN
Attorney General
State of Arizona

ANTHONY B. CHING
Solicitor General

TONI McCLORY
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
(602) 255-3333
Attorneys for the State
of Arizona

Supreme Court, U.S.
FILED
MAY 28 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1690

UNITED STATES SUPREME COURT

October Term, 1985

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE, an Arizona corporation,
Appellants,

v.

THE CITY OF AVONDALE,
a municipal corporation,
Appellee,

On appeal from the
Supreme Court of the
State of Arizona

THE STATE OF ARIZONA'S MOTION TO DISMISS OR AFFIRM

ROBERT K. CORBIN
Attorney General
State of Arizona

ANTHONY B. CHING
Solicitor General

TONI McCLORY
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
(602) 255-3333

Attorneys for the State
of Arizona, Intervenor

TABLE OF CONTENTS

		Page
ARGUMENT		
I.	THE APPELLANTS LACK STANDING	2
II.	NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED	6
	A. The statute has been amended	6
	B. Appellants' equal protection arguments are without merit	7
CONCLUSION		16
APPENDIX		17

TABLE OF AUTHORITIES

	Page
Case law	
Adams v. City of Colorado Springs, 308 F.Supp. 1397 (D.Colo. 1970), affirmed, 399 U.S. 901	11,12,14
Bateman v. Arizona, 429 U.S. 1302 (1976)	5
Berry v. Bourne, 588 F.2d 422 (4th Cir. 1978)	11,12
Carlyn v. City of Akron, 726 F.2d 287 (6th Cir. 1984)	11,13
City of Seattle v. State, 103 Wash.2d 663, 694 P.2d 641 (1985)	13
City of Tucson v. Garrett, 77 Ariz. 73, 267 P.2d 717 (1954)	8
County Court of Ulster County v. Allen, 442 U.S. 140 (1979)	3
Curtis v. Board of Supervisors, 7 Cal.3d 942, 501 P.2d 537, 104 Cal.Rptr. 297 (1972)	13
Doenges v. City of Salt Lake City, 614 P.2d 1237 (Utah 1980)	13
Hayward v. Clay, 573 F.2d 187 (4th Cir. 1978), cert. denied, 439 U.S. 959	13

TABLE OF AUTHORITIES (Cont'd)

	Page
Case law	
Holt Civic Club v. City of Tuscaloos 439 U.S. 60 (1978)	10
Hunter v. City of Pittsburgh 207 U.S. 161 (1907)	9,10,11
Rice v. Sioux City Memorial Park Cemetery, Inc. 349 U.S. 70 (1954)	6
Rosario v. Rockefeller 410 U.S. 752 (1973)	3
Singleton v. Wulff 428 U.S. 106 (1976)	5
Tileston v. Ulman 318 U.S. 44 (1943)	5
Torres v. Village of Capitan 92 N.M. 64, 582 P.2d 1277 (1978)	13,14
Township of Jefferson v. City of West Carrollton 517 F.Supp. 417 (S.D. Ohio 1981), affirmed, 718 F.2d 1099 (6th Cir. 1983)	11,13
Warth v. Seldin 422 U.S. 490 (1975)	4,5
Arizona Revised Statutes § 9-741 (West Supp. 1985) (amended 1986)	6,7,8

No. 85-1690

UNITED STATES SUPREME COURT

October Term, 1985

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE, an Arizona corporation,
Appellants,

v.

THE CITY OF AVONDALE,
a municipal corporation,
Appellee,

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the Rules of this Court, the State of Arizona moves that this appeal be dismissed or, alternatively, affirmed for the following reasons:

1. The appellants, as property owners, lack standing to claim that Arizona's former annexation statute unconstitutionally discriminated against non-property owners; and

2. This appeal does not present a substantial federal question because:

a. Since the filing of this appeal, the challenged statute has been significantly amended, and entirely new procedures will govern future annexations within the state; and

b. The former procedures were plainly constitutional and have been upheld by this and other federal courts that have reviewed similar annexation statutes.

ARGUMENT

I

THE APPELLANTS LACK STANDING

The appellants are owners of real property located in a territory that was annexed by the appellee, City of Avondale. They appeal the annexation, claiming that the statutory procedures uncon-

stitutionally discriminated against non-property owners.[1] Being property owners, however, the appellants lack standing to make this constitutional attack.

It is well settled that "[a]s a general rule, if there is no constitutional defect in the application of the statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations." County Court of Ulster County v. Allen, 442 U.S. 140, 155 (1979); accord, Rosario v. Rockefeller, 410 U.S. 752, 759, n.9 (1973)

---

1. They also attack the fact that the statute weighted the petitioning process according to the assessed value of the property. It is unclear whether the appellants have standing to assert even this narrower claim. In any event, the amendment of the statute on this very point renders further consideration of the issue inappropriate. See section II.a. infra.

(Petitioners lacked standing to attack the residency requirement in a voting law since "[t]he petitioners cannot represent a class to which they do not belong"); and Warth v. Seldin, 422 U.S. 490, 509 (1975) (respecting the "prudential standing rule that normally bars litigants from asserting the rights or legal interests of others in order to obtain relief for injury to themselves").

The present appeal falls squarely within the above standing principles. First, only a hypothetical case is presented, since there is nothing in the record which indicates that any non-property owners resided in the affected region. Second, even if there were non-owners, the appellants would not be the proper parties to assert the equal protection rights of such third parties. None of the limited, jus tertii exceptions is applicable here: There is no

statute which confers standing,[2] the appellants bear no special relationship to the non-property owners, and there is no reason why the non-property owners cannot assert their own rights, if they so choose. See Warth v. Seldin, supra at 509-510. Indeed, this case presents the very danger that the Court noted in Singleton v. Wulff, 428 U.S. 106 (1976):

> [T]hird parties themselves usually will be the best proponents of their own rights. The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them. The holders of the rights may have a like preference, to the extent they will be bound by the courts' decisions under the doctrine of stare decisis.

---

2. Appellants' Jurisdictional Statement implies that Arizona law confers standing (page 9). However, it is this Court's standing requirements--and not those of the state--that necessarily control. Tileston v. Ulman, 318 U.S. 44 (1943); see also Bateman v. Arizona, 429 U.S. 1302 (1976). Moreover, when the Arizona Supreme Court reached the merits, it expressly sidestepped the issue of standing. See footnote 1 of the opinion.

428 U.S. at 114. The appellants in this case are members of the class favored under the statute; plainly, they are not the appropriate parties to advocate the rights of those allegedly disfavored.

II

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

A. The Statute has been amended

Shortly after this appeal was taken, Ariz. Rev. Stat. § 9-741 was significantly amended by the Arizona Legislature. The new and present version of the statute is set forth in the appendix to this motion. Although the petitioning right remains limited to property owners, its role in the annexation process has been altered. Entirely new provisions govern how the annexation process is initiated, how public input is to be accommodated, and how the majority of petitioners is to be determined. Since the

new procedures will apply to certain pending, and all future, annexations, a ruling on Arizona's former statute can have only a limited and isolated impact. Accordingly, the instant case does not present a substantial federal question that warrants the expenditure of the Court's limited resources. See Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70 (1954) (Court dismissed writ of certiorari where adoption of new statute meant that the case would affect only the parties and therefore have only narrow, "episodic" value).

B. Appellants' Equal Protection Arguments Are Without Merit

Under Arizona's former law, the annexation process was triggered when a majority of property owners petitioned a city or town for inclusion within the corporate borders. Ariz. Rev. Stat. § 9-

741.[1/] The statute did not permit any person--property owner or otherwise--to vote on the issue of annexation. Instead, it left the annexation decision to the sole discretion of the governing body of the city or town. See City of Tucson v. Garrett, 77 Ariz. 73, 77, 267 P.2d 717, 719 (1954) ("The petitioners are mere supplicants and have no legal rights to require annexation under any condition").

---

3. The pertinent statutory language reads as follows:

> 9-471. Annexation by petition
>
> A. A city or town may extend and increase its corporate limits in the following manner:
>
> 1. On presentation of a petition in writing by the owners of not less than one-half in value of the real and personal property as would be subject to taxation by the city or town in the event of annexation, in any territory contiguous to the city or town, as shown by the last assessment of the property, and not embraced within the city or town limits, the governing body of the city or town may, by ordinance, annex the territory to such city or town.

Similar annexation procedures have been repeatedly upheld against equal protection challenges by both federal and state courts.

First, it is well settled that there is no constitutional right to vote or otherwise participate in annexation decisions. The issue of municipal boundaries is a political matter within the exclusive control of the state. The state can create, modify or abolish boundaries at will, or it can delegate those powers to cities and towns. As stated by this Court in Hunter v. City of Pittsburgh, 207 U.S. 161, 178-179 (1907):

> Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them . . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may . . . expand or contract the territorial area, unite the whole or part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, con-

> ditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.

Although Hunter predates the voting rights cases relied on by appellants, it retains full validity in non-voting, annexation contexts. See, e.g. Holt Civic Club v. City of Tuscaloos, 439 U.S. 60, 71 (1978) (where the Court quoted from Hunter and observed that "the case continues to have substantial constitutional

significance in emphasizing the extraordinarily wide latitude that States have in creating various types of political subdivisions and conferring authority upon them"). Accord, Adams v. City of Colorado Springs, 308 F.Supp. 1397, 1404 (D.Colo. 1970), affirmed, 399 U.S. 901 ("In upholding this [annexation] statute we are, of course, mindful that the Supreme Court's decision in Hunter v. City of Pittsburgh, supra, continues to be the law, and we are not at liberty to limit the effect of this decision by grafting the voting rights decisions on this annexation body of law"). See also Carlyn v. City of Akron, 726 F.2d 287, 288 (6th Cir. 1984), Berry v. Bourne, 588 F.2d 422 (4th Cir. 1978), and Township of Jefferson v. City of West Carrollton, 517 F.Supp. 417, 419 (S.D. Ohio 1981), affirmed, 718 F.2d 1099 (6th Cir. 1983) (all upholding annexation statutes on the authority of Hunter).

Second, it is not unconstitutional to restrict the petitioning process to property owners. Adams v. City of Colorado Springs, supra. Indeed, every discovered federal decision has found this common statutory arrangment to be constitutional. See, e.g., Berry v. Bourne, supra, where the Fourth Circuit reasoned:

> It is true that three-fourths of the freeholders in the area to be annexed must request annexation before the governing body of the annexing city may consider annexation. This is a common preliminary prerequisite for authorization of annexation, whether by an election or by action of the annexing city's governing board. But the important fact is that the action of the freeholders in signing the request for annexation does not authorize annexation. Annexation depends wholly on the favorable vote of the governing body of the annexing city. This is the crucial action and on that neither freeholders nor electors as such have a vote. Since the electors of the municipality of the area to be annexed are not given the right to vote under the challenged statute, the application of the statute poses no equal protection issue.

Id. at 424. Accord, Carlyn v. City of Akron, supra; Township of Jefferson v. City of West Carrollton, supra. State court decisions are also in accord. See, e.g., Doenges v. City of Salt Lake City, 614 P.2d 1237, 1239 (Utah 1980) ("The annexation procedures frequently put special burdens on real property owners. State Legislatures have been permitted to force these interests into focus at the petitioning stage"); and Torres v. Village of Capitan, 92 N.M. 64, 582 P.2d 1277 (1978).[4/]

Third, the decision of the Arizona Supreme Court articulates many legitimate reasons for the property-owner distinc-

---

4. Only where elections are authorized have property-owner distinctions been struck down. See, e.g., Hayward v. Clay, 573 F.2d 187 (4th Cir. 1978), cert. denied, 439 U.S. 959; City of Seattle v. State, 103 Wash.2d 663, 694 P.2d 641 (1985) (distinguishing the situation from petition procedures); and Curtis v. Board of Supervisors, 7 Cal.3d 942, 501 P.2d 537, 104 Cal.Rptr. 297 (1972).

tion challenged here. (See Opinion at pp. 13-14.) Apart from the disproportionate financial burdens that affect property owners upon annexation, practical political needs are served by restricting the initial petitioning process to a narrower group. The latter factor was expressly found to be a sufficient rational basis to sustain the classification in Adams v. City of Colorado Springs, supra at 1404, a decision that was subsequently affirmed by this Court. See also Torres v. Village of Capitan, supra at 70, 582 P.2d at 1283.

Finally, appellants' ancillary attack on the use of assessed property values to determine the petitioning majority fails for the same reasons outlined above. The petitioning right is not a voting right, and appellants' election cases are again inapplicable. Similarly, the rational considerations which justify the

roperty-owner distinction, justify the eighting as well.

In short, there is simply no authority to support appellants' equal protection arguments, and the same arguments ave been rejected by this and other ourts on multiple occasions.

. . .

CONCLUSION

Because the appellants lack standing to bring this consitutional challenge, and because the case does not present a substantial federal question, the State of Arizona requests that the appeal be dismissed or affirmed.

Respectfully submitted,

ROBERT K. CORBIN
Attorney General
State of Arizona

ANTHONY B. CHING
Solicitor General

TONI McCLORY
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
(602) 255-3333

Attorneys for the State
of Arizona, Intervenor

A P P E N D I X

.471. Annexation of territory; procedures; notice; petitions; access to information; restrictions

A. The following procedures are equired to extend and increase the corrate limits of a city or town by annexion:

1. A city or town shall file in e office of the county recorder of the unty in which the annexation is prosed a blank petition required by paraaph 4 of this subsection setting forth description and an accurate map of all e exterior boundaries of the territory ntiguous to the city or town proposed be annexed. If state land is included the territory, written approval of the ate land commissioner and the selection ard established by section 37-202 shall so be filed.

2. Signatures on petitions filed r annexation shall not be obtained for waiting period of thirty days after ling the blank petition.

3. After filing the blank petition rsuant to paragraph 1 of this subsecon, the governing body of the city or wn shall hold a public hearing within e thirty day waiting period to discuss e annexation proposal. The public aring shall be held in accordance with e provisions of Title 38, Chapter 3, ticle 3.1, except that, notwithstanding e provisions of section 38-431.02, subctions C and D, the following notices the public hearing to discuss the anxation proposal shall be given at least x days before the hearing:

(a) Publication at least once in a ewspaper of general circulation, which s published or circulated in the city or own and the territory proposed to be an- exed, at least fifteen days before the nd of the waiting period.

(b) Posting in at least three con- picuous public places in the territory roposed to be annexed.

(c) Notice by first class mail sent o the chairman of the board of supervi- ors of the county in which the territory roposed to be annexed is located.

(d) Notice by first class mail with n accurate map of the territory proposed o be annexed sent to each owner of the eal and personal property as shown on he list furnished pursuant to subsection of this section that would be subject o taxation by the city or town in the vent of annexation in the territory pro- osed to be annexed.

4. Within one year after the last ay of the thirty day waiting period a etition in writing signed by the owners f one-half or more in value of the real nd personal property and more than one- alf of the persons owning real and per- onal property that would be subject to axation by the city or town in the event f annexation, as shown by the last as- essment of the property may be circu- ated and filed in the office of the ounty recorder.

5. No alterations increasing or educing the territory sought to be an- exed shall be made after a petition has en signed by a property owner.

6. The county recorder shall not accept a filing for annexation of any part of the same territory for which a filing for annexation has already been made pursuant to paragraph 4 of this subsection.

B. All information contained in the filings, the notices, the petition, maps and property rolls and other matters regarding a proposed or final annexation shall be made available by the appropriate official for public inspection during regular office hours.

C. Any city or town, the attorney general, the county attorney, or any other interested party may upon verified petition move to question the validity of the annexation for failure to comply with the provisions of subsection A of this section. The petition shall set forth the manner in which it is alleged the annexation procedure was not in compliance with the provisions of subsection A of this section and shall be filed within thirty days after adoption of the ordinance annexing the territory by the governing body of the city or town and not otherwise. The burden of proof shall be upon the petitioner to prove the material allegations of his verified petition. No action shall be brought to question the validity of an annexation ordinance unless brought within the time and for the reasons provided in this subsection. All hearings provided by this section and all appeals therefrom shall be preferred and heard and determined in preference to all other civil matters, except election actions. In the event more than one petition questioning the validity of an annexation ordinance is filed, all such petitions shall be consolidated for hear-

g. If two or more cities or towns show e court that they have demonstrated an tive interest in annexing any or all of e area proposed for annexation, the urt shall consider any oral or written reements or understandings between or ong the cities and towns in making its termination pursuant to this subsection.

D. The annexation shall become fi- l after the expiration of thirty days om the adoption of the ordinance annex- g the territory by the city or town verning body, provided the annexation dinance has been finally adopted in ac- rdance with procedures established by atute, charter provisions, or local or- nances, whichever is applicable, sub- ct to the review of the court to deter- ne the validity thereof if petitions in jection have been filed.

E. For the purpose of determining e sufficiency of the percentage of the lue of property under this section, ch values of property shall be deter- ned as follows:

1. In the case of property as- ssed by the county assessor, values all be the same as shown by the last sessment of the property.

2. In the case of property valued the department of revenue, values all be appraised by the department in e manner provided by law for municipal sessment purposes.

F. For the purpose of determining e sufficiency of the percentage of per- ns owning property under this section, e number of persons owning property all be determined as follows:

1. In the case of property assessed by the county assessor, the number of persons owning property shall be as shown on the last assessment of the property.

2. In the case of property valued by the department of revenue, the number of persons owning property shall be as shown on the last valuation of the property.

3. If an undivided parcel of property is owned by multiple owners, such owners shall be deemed as one owner for the purposes of this section.

4. If a person owns multiple parcels of property, such owner shall be deemed as one owner for the purposes of this section.

G. The county assessor and the department of revenue, respectively, shall furnish to the city or town proposing an annexation within thirty days after a request therefor a statement in writing showing the owner, the address of each owner and the appraisal and assessment of all such property.

H. Territory is not contiguous for the purposes of subsection A, paragraph 1 of this section unless:

1. It adjoins the exterior boundary of the annexing city or town for at least three hundred feet.

2. It is, at all points, at least two hundred feet in width, exclusive of highways.

3. The distance from the existing boundary of the annexing city or town where it adjoins the annexed territory to the furthest point of the annexed territory from such boundary is no more than twice the width of the annexed territory.

I. A city or town shall not annex territory if as a result of such annexation unincorporated territory is completely surrounded by the annexing city or town.

J. Notwithstanding any provisions of this article to the contrary, any town incorporated prior to 1950 which had a population of less than two thousand persons by the 1970 census and which is bordered on at least three sides by Indian lands may annex by ordinance territory owned by the state within the same county for a new townsite which is not contiguous to the existing boundaries of the town.

K. The provisions of subsections H and I of this section shall not apply to territory which is surrounded by the same city or town or which is bordered by the same city or town on at least three sides.

L. A city or town annexing an area shall adopt zoning classifications which permit densities and uses no greater than those permitted by the county immediately before annexation. Subsequent changes in zoning of the annexed territory shall be made according to existing procedures established by the city or town for the rezoning of land.

M. The annexation of territory within six miles of territory included in any pending incorporation petition filed

with the county recorder pursuant to section 9-101.01, subsection C shall not cause an urbanized area to exist pursuant to section 9-101.01 which did not exist prior to the annexation.

The new statutory procedures were adopted with the following applicability and emergency clauses:

Section 8. Applicability; expiration

A. Section 9-471, Arizona Revised Statutes, as amended by this act, applies to any annexation process which begins after the effective date of this act.

B. Except as provided in subsection C or D of this section, any annexation process which began before the effective date of this act but which did not become final before the effective date of this act for any reason, including the application of the moratoriums of Laws 1985, chapter 3 or 10, is null and void. Any attempt to reinstitute such an annexation is subject to section 9-471, Arizona Revised Statutes, as amended by this act.

C. This act except for the provisions of section 4 does not affect the validity of any annexation ordinance passed before the effective date of this act and finally determined to be valid by a court of competent jurisdiction before or after the effective date of this act. This act does not affect the validity of any annexation ordinance passed in accordance with applicable law after March 13, 1985 and before the effective date of this act

ich becomes final on or after the effec-
ve date of this act.

D. This act does not affect the va-
dity of any annexation by a city or town
a county having a population in excess
two hundred fifty thousand persons ac-
rding to the 1980 United States decenni-
census if the annexation is pursuant to
petition circulated after March 13, 1985
d signed by seventy-five per cent of the
al property owners in the territory pro-
sed to be annexed, including the state
nd commissioner if state lands are in-
uded and if the annexation ordinance is
ssed before June 1, 1986.

Section 9. Emergency

To preserve the public peace, health
d safety it is necessary that this act
come immediately operative. It is
erefore declared to be an emergency mea-
re, to take effect as provided by law.

pproved by the Governor - April 10, 1986

iled in the Office of the Secretary of
tate - April 10, 1986

Supreme Court, U.S.
FILED
JUN 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1690

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE COMPANY, an Arizona corporation

Appellants,

v.

THE CITY OF AVONDALE, a municipal corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

APPELLANTS' REPLY IN OPPOSITION TO APPELLEE'S AND INTERVENOR'S MOTIONS TO DISMISS OR AFFIRM

JOHN J. BOUMA
Counsel of Record
EILEEN J. MOORE
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073
(602) 257-7216
Attorneys for Appellants

TABLE OF CONTENTS

	Page
ARGUMENT	2
I. THE CASE PRESENTS SUBSTANTIAL FEDERAL QUESTIONS	2
II. APPELLANTS MEET THE STANDING REQUIREMENTS OF ARTICLE III	4
CONCLUSION	7

TABLE OF AUTHORITIES

	Page
Adams v. City of Colorado Springs, 308 F.Supp. 1397 (1970)	2, 4
Craig v. Boren, 429 U.S. 190 (1976)	6
Curtis v. Board of Supervisors, 104 Cal. Rptr. 297, 501 P.2d 537 (1972)	3, 4
Eisenstadt v. Baird, 405 U.S. 438 (1972)	6
Hayward v. Clay, 573 F.2d 187 (4th Cir. 1978)	3
Hunter v. City of Pittsburgh, 207 U.S. 161 (1907)	2
Levinsohn v. City of San Raphael, 40 Cal.App.3d 656, 115 Cal. Rptr. 309 (1974)	3
Town of Fond du Lac v. City of Fond du Lac, 22 Wis.2d 533, 126 N.W.2d 201 (1964)	3
University of California v. Bakke, 438 U.S. 265 (1978)	6
Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977)	5
Warth v. Seldin, 442 U.S. 490 (1975)	5
Watt v. Energy Action Foundation, 454 U.S. 151 (1981)	6
Williams v. Rhodes, 393 U.S. 23 (1968)	6

No. 85-1690

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

GOODYEAR FARMS, an Arizona corporation; LITCHFIELD PARK PROPERTIES, an Arizona corporation; and LITCHFIELD PARK SERVICE COMPANY, an Arizona corporation

Appellants,

v.

THE CITY OF AVONDALE, a municipal corporation,

Appellee.

APPELLANTS' REPLY IN OPPOSITION TO APPELLEE'S AND INTERVENOR'S MOTIONS TO DISMISS OR AFFIRM

Appellants hereby oppose the Motions to Dismiss or Affirm filed by appellee and the intervenor State of Arizona. The appeal presents substantial federal questions. The Appellants meet the case or controversy requirements of Article III and, therefore, have standing to raise their constitutional challenge.

ARGUMENT

I. THE CASE PRESENTS SUBSTANTIAL FEDERAL QUESTIONS

1. Appellee erroneously suggests that appellants are asking this Court to hold that there is a constitutional right to vote in an annexation proceeding.[1] (M.D. 4) That is not appellants' position. The Arizona statute grants certain individuals the right to participate in a political process in a manner that will, in and of itself, determine the municipal body and laws that will govern everyone in the area to be annexed — not only those who participate in the petitioning process, but those residents who are not allowed to participate. It is appellants' position that under the requirements of Arizona's annexation statute, petitioning for annexation is a right just as fundamental as the right to vote, and that the constitutional guarantee of equal protection applies to the right to petition just as strongly. The difference between placing a slip of paper in a ballot box and signing one's name on such a petition cannot be constitutionally significant, rendering equal protection principles applicable in one case and not in the other.

Unlike the cases cited by appellee to support its position,[2] the Arizona legislature has granted to citizens the exclusive right to select and determine the laws and representatives

---

[1] Appellee's citation to *Hunter v. Pittsburgh*, 207 U.S. 161 (1907) and *Adams v. City of Colorado Springs*, 308 F.Supp. 1397 (D. Colo. 1970) (M.D. 5) are therefore inapplicable. Hunter was not an equal protection case, did not discuss the property-owner/non-property owner classification, and did not deal with a statute similar to Arizona's.

[2] Motion to Dismiss, p. 6 n. 4.

that will govern the area to be annexed. It is not "sheer bootstrapping" (M.D. 6) to argue that this fundamentally important political right is entitled to strict scrutiny.

Appellee argues that no decision has expanded the right to vote to a situation where no election is held (M.D. 7). But appellants do not ask the Court to create a right where none was created by the legislature. In Arizona, the legislature itself has granted to some citizens, unequally, the exclusive right to "vote" for the laws and lawmakers who will represent them once the annexation is complete, and has thus "expanded" the equal protection guarantee to the petitioning process. In a very real sense, the state has granted a voting right but has improperly attempted to restrict it (M.D. 7). Appellee, like the Arizona Supreme Court, missed the "bright line principle" that once the right has been granted, the equal protection guarantees apply (M.D. 7).

Contrary to appellee's suggestion (M.D. 4, 6 n. 5), the decision below does conflict with other state cases. In *Curtis v. Board of Supervisors,* 104 Cal. Rptr. 297, 501 P.2d 537 (1972), the California Supreme Court held unconstitutional a statute allowing owners of 51% of the property value of the area to be incorporated to veto, by petition, the formation of a new city. The same result was reached in *Levinsohn v. City of San Rafael,* 40 Cal.App.3d 656, 115 Cal. Rptr. 309 (1974), *Hayward v. Clay,* 573 F.2d 187 (4th Cir. 1978) and *Town of Fond du Lac v. City of Fond du Lac,* 22 Wis.2d 533, 126 N.W.2d 201 (1964), to name a few. Although each of those cases provided for an election somewhere in the procedure, none of the challenged participatory procedures was an election. *Curtis, Levinsohn* and *Fond du Lac* involved petitioning. *Hayward* involved a referendum. The important point of the cases, however, is that all of them condemned weighted property-owning based classifications in situations virtually identical to the one at bar. It is clear, moreover, that had those courts been called upon to evaluate Arizona's annexation statute, each would have found the statute unconstitutional because there is no compelling state interest

or rational basis to uphold classifications based upon property ownership.

2. The property-owning classification created by the statute cannot survive even minimal scrutiny under the Equal Protection Clause. Appellee's argument that including all electors in the process "would 'severely hamper' the annexation process and impair urban development" (M.D. 8) is simply unsupported and unpersuasive. Moreover, *Adams v. City of Colorado Springs*, 308 F.Supp. 1397 (1970), which leaned upon this justification, is not applicable. In that case, "all persons residing within the territory to be annexed are treated equally with respect to the right to exercise the franchise." *Id.* at 1403. Here, persons in the area to be annexed are not treated equally. Other cases previously cited, such as *Curtis*, specifically reject any notion that there is any rational basis whatsoever for an exclusionary and weighted "voting" scheme that is keyed to property ownership.

Appellants in no way "concede," nor have they ever conceded, that there is any rational basis whatsoever for the statute's classifications (M.D. 8). Merely acknowledging that there is good reason for allowing citizens to participate in the petitioning process is not conceding, "in effect" or otherwise, that there is any reason for excluding some citizens, and diluting the voice of others, from a fundamentally important political process.

The federal questions raised by appellants will not have only a limited and isolated impact. To the contrary, appellee itself concedes that the statute's recent amendment does not affect the issues involved herein. Appellants themselves are aware of at least three additional cases currently pending in the Arizona courts that seek to decide the very issues raised before this Court. The questions presented are ones that will recur and at least in part will haunt the new statute.

II. APPELLANTS MEET THE STANDING REQUIREMENTS OF ARTICLE III.

The State intervenor contests appellants' standing to raise their important constitutional claims. In order to have

standing, appellants need only demonstrate a "distinct and palpable injury" that can fairly be traced to the challenged conduct, so that the exercise of federal power will redress their injury. *Warth v. Seldin*, 442 U.S. 490, 501 (1975); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 261 (1977). Appellants meet these requirements.

First, annexation will subject appellants involuntarily to the laws and ordinances of the City of Avondale, the charges and taxes for municipal services, and the general control, authority and jurisdiction of the City. This is a "distinct and palpable injury," that satisfies the Article III "case or controversy" requirement.

Second, appellants are denied, by the operation of the statute, their constitutional rights to gather support against annexation from others in the area to be annexed who are disenfranchised or whose vote is diluted, to associate with them for the advancement of their political beliefs, and to therefore participate effectively in this fundamentally important political process. Those who may desire to defeat annexation must obtain enough support so that the signatures on the petition will be insufficient to initiate annexation under the statute. One such person's vote against annexation is meaningless absent his ability to pool his vote with those votes of others who also desire to defeat annexation. The statute in this case infringes upon appelants' own First Amendment rights, and upon those of other similarly situated residents.

Third, by conditioning the success of the petition to annex upon the value of the property in the area to be annexed, the annexation statute denies an equal participation to owners of property in the area to be annexed. Their "vote" is unconstitutionally weighted by the disparate values of their property.

Appellants' injury can also fairly be traced to the challenged conduct, so that the exercise of federal power will redress their injury. Striking down the wealth and property-

owning classification of the annexation statute will allow appellants the opportunity to participate meaningfully by having an equal participation with other property owners and by having the opportunity to join with other non-property owning residents who desire to defeat annexation to advance their collective political beliefs. See, *Williams v. Rhodes*, 393 U.S. 23 (1968) (right to associate for advancement of political beliefs and right to cast vote effectively are overlapping fundamental rights). Appellants need not prove that they will succeed in defeating the annexation in order to show that this injury will be redressed. Loss of the opportunity to participate meaningfully is injury sufficient to give appellants standing, even though the benefit that would have been realized had the opportunity been accorded is uncertain. *Watt v. Energy Action Educational Foundation*, 454 U.S. 151 (1981). Whether victory on the merits would result in the defeat of the annexation is a matter of "relief," not standing. *University of California v. Bakke*, 438 U.S. 265, 280 n.14 (1978). Appellants have standing to raise the issues presented.

Finally, this Court's "prudential rule of self-restraint," *Craig v. Boren*, 429 U.S. 190 (1976), should not preclude appellants from asserting the associational and equal protection rights of the disenfranchised non-property owners. Appellants, as advocates of the rights to associate to advance collective political beliefs and to effectively and meaningfully participate in the process of selecting one's governing body, have the necessary interest and adversarial involvement to bring the issues into sharp focus. Appellants and the disenfranchised non-property owners have been denied the right to associate together; neither have an equal or meaningful opportunity to participate in the petitioning process. Their interests are clearly aligned. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

CONCLUSION

Appellants have standing and raise substantial federal questions that merit this Court's plenary review; appellants therefore respectfully request the Court to deny appellee's and the State intervenor's Motions to Dismiss or Affirm.

RESPECTFULLY SUBMITTED,

JOHN J. BOUMA
Counsel of Record

EILEEN J. MOORE
SNELL & WILMER
3100 Valley Bank Center
Phoenix, Arizona 85073
(602) 257-7216

Attorneys for Appellants

June 3, 1986.